IN THE FEDERAL HIGH COURT OF NIGERIA

IN THE WARRI JUDICIAL DIVISION

HOLDEN AT WARRI

ON TUESDAY, THE 24TH DAY OF NOVEMBER, 2026

BEFORE HIS LORDSHIP HON. JUSTICE H.A. NGANJIWA

JUDGE

FEDERAL HIGH COURT OF NIGERIA WARRI DIVISION CASHIER SIGN: DATE 24/11/26

SUIT NO: FHC/WR/CS/120/2026

Pd-Rcpt-2115-4334-9919 96

BETWEEN

ALEXANDER OSONDU AKPODIETE ..... PLAINTIFF

CERTIFIED TRUE COPY Name: O.O. Mesheile Date: 24-11-2026 Sign: Rank: H.C.O. FEDERAL HIGH COURT WARRI

AND

1. **INDEPENDENT NATIONAL ELECTORAL COMMISSION (I.N.E.C.)**
2. **NIGERIA DEMOCRATIC CONGRESS (NDC)**
3. **AUGUSTINE OVIE OMO-AGEGE**

..... DEFENDANTS

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RULING/JUDGMENT

The Plaintiff took out an Originating Summons dated 09/06/2026 and filed on 10/06/2026, wherein 5 questions for determination are formulated as follows:

1. Whether, having regard to the provisions of Section 77(4), (5) and (6) of the Electoral Act 2026, a political party can lawfully permit the participation in its primary election of a person whose name was not contained in the Register of Members submitted to the 1st Defendant not later than twenty-one (21) days before the date fixed for the conduct of the primary election.
2. Whether by virtue of Sections 77(4), (5) and (6) of the Electoral Act, 2026, the Participation of the 3rd Defendant in the 2nd Defendant's primary election for the Delta Central Senatorial District held on or about 29th of May 2026, despite his name not being contained in the membership register submitted to the 1st Defendant by the 2nd Defendant at least 21 days to the conduct of the said primary election is unlawful.
3. Whether by virtue of Sections 77 (4), (5) and (6) of the Electoral Act, 2026, the primary election conducted by the 2nd Defendant for the Delta Central Senatorial District on or about 29th of May 2026 is invalid, null and void and of no effect

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whatsoever by reason of the Participation therein of the 3rd Defendant whose name was not contained in the membership register submitted to the 1st Defendant by the 2nd Defendant not later than twenty-one (21) days before the said primary election.

4. Whether the 2nd Defendant's Delta Central Senatorial District Primary election held on or about the 29th of May, 2026 having been conducted in total disregard and in breach of the provisions of Section 77 of the Electoral Act, 2026 is capable of producing a lawful candidate for the 2nd Defendant for the purpose of the 2027 general election.

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5. Whether having regard to sections 77(4), (5) and (6) of the Electoral Act, 2026, the 1st Defendant can validly accept, recognize or give effect to the nomination or sponsorship of the 3rd Defendant by the 2nd Defendant for the Delta Central Senatorial District election, where the said nomination emanated from a primary election conducted on or about 29th of May, 2026 in breach of the provisions of the electoral Act, 2026.

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In anticipation of a favourable determination of the above stated questions, the Plaintiff is praying for the following reliefs:

1. **A DECLARATION that having regard to the provisions of Section 77 (4), (5) and (6) of the Electoral Act, 2026 a political party cannot lawfully permit the participation in its primary election of a person whose name was not contained in the Register of Members Submitted to the 1st Defendant not later than twenty-one (21) days before the date fixed for the conduct of the primary election.**
2. **A DECLARATION that by virtue of Sections 77(4), (5) and (6) of the Electoral Act, 2026, the participation of the 3rd Defendant in the 2nd Defendant's primary election for the Delta Central Senatorial District held on or about 29th of May, 2026, despite his name not being contained in the membership register submitted to the 1st Defendant by the 2nd Defendant at least 21 days to the conduct of the said primary election is unlawful.**

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3. A Declaration that by virtue of Sections 77 (4), (5) and (6) of the Electoral Act 2026, the primary election conducted by the 2nd Defendant for the Delta Central Senatorial District on or about 29th of May, 2026 is invalid, null and void and of no effect whatsoever by reason of the participation therein of the 3rd Defendant whose name was not contained in the membership register submitted to the 1st Defendant by the 2nd Defendant not later than twenty-one (21) days before the said primary election.

4. A DECLARATION that the 2nd Defendant's Delta Central Senatorial District Primary election held on or about the 29th of May, 2026 having been conducted in total disregard and in breach of the provisions of Section 77 of the Electoral Act, 2026 is not capable of producing a lawful candidate for the 2nd Defendant for the purpose of the 2027 general election.

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5. A DECLARATION that having regard to Sections 77(4), (5) and (6) of the Electoral Act, 2026 the 1st Defendant cannot accept, recognize or give effect

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to the nomination or sponsorship of the 3rd Defendant by the 2nd Defendant for the Delta Central Senatorial District election, where the said nomination emanated from a primary election conducted on or about 29th of May, 2026 in breach of the provisions of the Electoral Act, 2026.

6. AN ORDER setting aside or nullifying the Delta Central Senatorial District primary election conducted by the 2nd Defendant on or about the 29th day of May, 2026 for failing to comply with the provisions of the Electoral Act, 2026.

7. AN ORDER directing the 1st Defendant not to include the name of the 3rd Defendant as a candidate for the 2027 general election for the Position of Senator representing Delta Central Senatorial District.

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8. AN ORDER directing the 2nd Defendant to conduct a fresh primary election for the Delta Central Senatorial District.

9. AN ORDER disqualifying the 3rd Defendant from participating in the 2nd Defendant's Delta Central Senatorial Direct primary election.

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10. **AN ORDER setting aside the sponsorship of the 3rd Defendant by the 2nd Defendant for the Delta Central Senatorial District election to be held on the 16th of January, 2027 of thereabout.**

11. **AN ORDER COMPELLING the 2nd Defendant to remove the name of the 3rd Defendant from its list of winners of primary elections conducted for the purpose of nominating candidate for the 2027 general elections.**

12. **AN ORDER OF INJUNCTION restraining the 2nd Defendant either by itself, agents, privies, surrogates or any other person(s) whosoever from according recognition to the 3rd Defendant or in any manner whatsoever featuring or parading the 3rd Defendant as the winner of the 2nd Defendant's primary election for the Delta Central Senatorial District election conducted on the 29th of May, 2026 of thereabout.**

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13. **AN ORDER OF INJUCTION restraining the 3rd Defendant from parading himself, representing himself as or permitting himself to be represented as a person eligible to contest the 2nd Defendant's**

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primary election for the purpose of sponsoring him as a candidate for the 2027 General Election for the position of Senator representing the Delta Central Senatorial District.

14. **AN ORDER OF INJUNCTION restraining the 2nd Defendant either by itself agents, members, privies or surrogate from submitting the name of the 3rd Defendant as its candidate for the office of senator representing the Delta Central Senatorial District for the forthcoming 2027 general elections.**
15. **ANY OTHER OR FURTHER CONSEQUENTIAL ORDER OR ORDERS of this Honourable Court as the circumstances of this case may require in the interest of justice.**

The Originating Summons has given rise to a number of interlocutory applications, they are as follows:

1. The 2nd Defendant's Preliminary objection opposing the Originating Summons. The preliminary objection is argued together with and contained in the 2nd Defendant's written address in support of it's Counter Affidavit in opposition to the Originating Summons.

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2. The 3rd Defendant's Notice of Preliminary Objection dated 15th July, 2026 opposing the Originating Summons.
3. The 1st Defendant's Motion on Notice dated 5th October, 2026 to regularize his Further Counter Affidavit.
4. The 3rd Defendant's Motion on Notice dated 29th September, 2026 to regularize his further Counter Affidavit.
5. The Plaintiff's Motion to have the 2nd and 3rd Defendant's Further Counter Affidavit struck out.

It would be tidier and it is trite to dispose of these various applications before diving into the resolution of the substantive matter.

At the hearing **Dr. D.D Dodo SAN** appears for the Plaintiff with **Dr. Ayo Asala, SAN, S. Figeoje, Esq., Emmanuel Lawal Esq., O. U. Daghagba, Esq., C. E. Obiazi Esq.,** and **F. J. Kpedi Esq.**

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F. T. Epili-Ede, Esq. appears for the 1st Defendant.

O.O.Uzi, Esq. with **O. J. Enewovwa, Esq** appear for the 2nd Defendant.

Dr. Onyechi Ikpeazu, SAN appears with **David Ityonyiman, Esq.** for the 3rd Defendant.

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THE 1ST DEFENDANT'S MOTION ON NOTICE

F. T. Epili-Ede, Esq. Counsel for the 1st Defendant applied to withdraw their motion on notice dated 5th day of October, 2026 and since the Counsel for the other parties having declared that they were not opposed to the 1st Defendant application the said motion was accordingly struck out.

THE 3RD DEFENDANT'S MOTION ON NOTICE

This ruling is with regard to the 3rd Defendant/Applicant's Motion on Notice dated 29th day of September, 2026 and filled on the 2nd day of October, 2026, the application is brought pursuant to the **Federal High Court (Pre-election) Practice Directions, 2026; Sections 6(6)(a) and 36 (1) of the Constitution of the Federal Republic of Nigeria 1999 (As Amended);** and under the inherent jurisdiction of this Honourable Court, praying for the following reliefs:-

1. **AN ORDER granting leave to the 3rd Defendant/Applicant to rely on the 3rd Defendant's Further Counter-Affidavit in opposition to Originating Summons filed 12/08/2026 in response to the new issues introduced in the Plaintiff's further Affidavit in opposition to the 3rd Defendant's Counter Affidavit,**

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which issues were not raised in the Plaintiff's Originating Summons.

2. **AN ORDER deeming the 3rd Defendant/Applicant's Further Counter Affidavit already filed and served, as properly filed and served, the appropriate filing fees having been paid.**
3. **AN FOR SUCH FURTHER ORDER(S) as the Honourable Court may deem fit to make in the circumstance.**

The grounds upon which the Application was brought among others are as follows;-

1. **The Plaintiff introduced new facts and issues in his Further Affidavit, which did not form part of his Originating Summons.**

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2. **That the new facts and matters raised in paragraphs 7-42 of the said Plaintiff's Further Affidavit relate to grave allegations of irregularity and alteration of the 3rd Defendant's Exhibit A004, a public document submitted by the 2nd Defendant and maintained in the custody of the 1st Defendant.**
3. **That the depositions in the 3rd Defendant's Further Counter Affidavit filed on 12th August, 2026 do not introduce unrelated or new issues but specifically**

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controvert the allegations of irregularity and alteration of the 3rd Defendant's Exhibit A004 raised by the Plaintiff in his Further Affidavit.

4. **That as a matter of fair hearing guaranteed by section 36(1) of the Constitution, unless the 3rd Respondent answers the new facts introduced by the Applicant, the 3rd Respondent would be prejudiced in the presentation of his case before this Honourable Court.**
5. **This application is brought out of an abundance of caution, in the interest of justice and in good faith.**
6. **This application will not delay the hearing of this pre-election matter, and will occasion no prejudice to the Plaintiff.**

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The motion is accompanied by a 9 paragraphs Affidavit dated 2nd October, 2026 deposed to by Rebecca Obenobe a litigation secretary in the employment of the Solicitors to the 3rd Defendant/Applicant. Attached thereto is a Written Address dated 29th September, 2026. The Applicant also filed on the 18th day of October, 2026 a further affidavit bearing the same date and a Reply on point of law dated 17th October, 2026.

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At the hearing of the application on 21st October, 2026 **Dr. Onyechi Ikpeazu, SAN.** Learned Counsel for the 3rd Defendant/Applicant adopted his processes as his argument. In his oral adumbration Counsel submitted that though the practice direction does not provide for the filing of Further Counter Affidavit, the law allows such practice. He cited **PDP V. USOH MGBATHI UNREPORTED CA/A/355A/2016 AT PAGES 16-17** delivered on 15th April, 2017; and also **SIR AMBROSE OYOVWE & 33 ORS V. APC & 2 ORS Suit No. FHC/CS/30/2026** delivered on 20th of July 2026 by this Court. Thus he urged the Court to grant his application.

In opposing the application, the Plaintiff/Respondent filed his Counter Affidavit of 16 Paragraphs, deposed to on the 7th day of October, 2026 by the Plaintiff himself and a Written Address of Counsel dated 16th October, 2026.

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Dr. D.D. Dodo, SAN learned Counsel for the Plaintiff/Respondent adopted his processes as their argument in opposing the application. While urging the court to refuse the reliefs sought the Learned Silk submitted that what the applicant did was to take a calculated risk. The Plaintiff's **Exhibit 7** (Registrar of Members) was front loaded along with the Originating Summons. He further submitted that **Exhibit 7 and**

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14 are one and the same thing. What they did was the authenticity of their own Exhibit. He cited **HOMAN ENGINEERING CO.LTD. V. U.W.S. LTD. (2025) 6 NWLR 431 (PP. 445-446, PARAS. G-A); AONDOAKAA V. OBOT (2022) 5 NWLR (PT. 1824) 523 AT PAGE 599.**

In reply the 3rd Defendant/ Applicant Counsel **Dr. Onyechi Ikpeazu, SAN** submitted that the authorities cited by the Plaintiff/Respondent's Counsel do not apply in this case. He referenced the **Evidence Act** and the case of **GUSAU V. INEC 2023 LPELR-60152 SC.**

BACKGROUND

By way of Originating Summons, the Plaintiff/Respondent sued the Defendants and among other reliefs, it is seeking for a declaratory relief that **by virtue of Sections 77 (4), (5) and (6) of the Electoral Act 2026, the primary election conducted by the 2nd Defendant for the Delta Central Senatorial District on or about 29th of May, 2026 is invalid, null and void and of no effect whatsoever by reason of the participation therein of the 3rd Defendant whose name was not contained in the membership register submitted to the 1st Defendant by the 2nd**

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Defendant not later than twenty-one (21) days before the said primary election.

The 3rd Defendant responded to the suit by filing their Counter Affidavit and Written Address. By way of Reply the Plaintiff filed a Further Affidavit and a Reply on point of law. The 2nd and 3rd Defendants/Respondents proceeded to file Further Counter Affidavit in response to the Plaintiff's Further Affidavit. The Defendant/Applicant now brings this motion to regularize his own Further Counter Affidavit.

MOTION ON NOTICE BY THE 3RD DEFENDANT

ISSUES FOR DETERMINATION

Counsel for the 3rd Defendant/Applicant raised a sole issue for determination to wit:-

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Whether in the circumstances of this case, the 3rd Defendant/Applicant has placed sufficient materials before this Honourable Court to warrant the grant of leave to rely on the 3rd Defendant's Further Counter-Affidavit in Opposition to Originating Summons filed 12/08/2026 in response to the new issues introduced in the Plaintiff's Further Affidavit in opposition to the 3rd Defendant's Counter Affidavit?

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The Plaintiff/Applicant also raised a sole issue for determination thus;

> **Whether, having regard to the facts and circumstances of this case, the 3rd Defendant is entitled to the reliefs sought in the instant application?**

ARGUMENTS OF COUNSEL

The Defendant/Applicant's Counsel admitted that while the Practice Directions Contemplate a Counter-Affidavit by the Defendants in the substantive suit and a Reply by the Plaintiff there is no express provision for a Defendant to file a Further Counter-Affidavit. They however, submitted that where a party introduces new and material facts in a Further Affidavit, the opposing party must as of right, be afforded an opportunity to controvert those facts. He insisted that Paragraph 7-42 of the Plaintiff's Further Affidavit contain serious allegations of irregularities and alterations against the 3rd Defendant's **Exhibit A004.** He relied on the case of **OJO V. ABDULAZEEZ (2024) 6 NWLR (PT. 1934) 341; ZENITH BANK PLC V. BANKOLANS INVESTMENTS LIMITED & ANOR (2011) LCN/4722 (CA).**

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Relying on **AKEREDOLU V. AKINREMI (1989) 3 NWLR (PT. 108) 164; ISHOLA V. SOCIETE GENERALE BANK (NIG.) LTD (1997) 2 NWLR (PT. 488) 405.** He contended that where, as in this case, a party introduces new issues in a reply, fairness demand that the other party be afforded an opportunity to respond to them. He cited **Section 36(1) of the Constitution of the Federal Republic of Nigeria 1999 (as Amended)** and the case of **KOTOYE V. CBN (1989) 1 NWLR (PT.98) 419** to rely on the principle of fair hearing. He submitted that a breach of the right renders the proceedings a nullity.

It was further submitted for the 3rd Defendant /Applicant that the grant of this application will occasion no prejudice to the Plaintiff, and will not delay the determination of this pre-election matter within the time prescribed by **Section 285 (10) of the Constitution.** That the proposed Further Counter-Affidavit is brief and confined strictly to the new issues. And the Plaintiff will have the opportunity to respond, if he so wishes.

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He submitted that **Paragraph 3 (b) of the Practice Directions** requires that the parties "**focus on matters which are genuinely in issue**". That having introduced these new matters, the Plaintiff has made them issues in this suit. It is only fair and

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just that the 3rd Defendant be heard on them, so that the Court may determine the matters genuinely in issue upon a complete record.

In his response the Plaintiff/Respondent Counsel insisted that the Plaintiff did not introduce any new issue warranting the 3rd Defendant to file his incompetent Further Counter Affidavit. That the membership register issue was already directly in issue before the filing of the Plaintiff's Further Affidavit. That he merely replied the 3rd Defendant's Counter Affidavit and the document he brought in.

He further argued that neither the **Federal High Court (Pre-Election) Practice Directions** nor the **Federal High Court (Civil Procedure) Rules** makes provision for Further Counter-Affidavit by a Respondent after the Applicant has filed a Reply. The 3rd Defendant's Further Counter-Affidavit is therefore a process which is not contemplated by the applicable procedural framework thus incompetent. Relying on the Court of Appeal judgment in the case of **KOGI STATE V. SIMON (2026) 7 NWLR (PT. 2041) 127 AT 147-148, PARAS. E-F** to posit that where the rules of Court do not provide for a particular process, a party cannot, as of right introduce such a process into the proceedings.

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He argued that the failure of the 3rd Defendant to first seek leave of Court before filing the process in question makes it incompetent and the subsequent application for leave cannot retrospectively cure the fundamental defect in the process. He cited **IKOLI VENTURES LTD V. SPDCN LTD. (2008) 12 NWLR (PT.1101) 422 AT 437, PARA C; ALMAJIR V. JALBAIT VENTURES (NIG.)LTD. (2021) 15 NWLR (PT.1798) 157 AT 172, PARA. F**

He insisted that constitutional right to fair hearing does not confer upon a litigant an unfettered right to file processes outside the Rules of Court. Fair hearing must be exercised within the procedural framework established by the Rules of Court.

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The Plaintiff/Respondent Counsel further posited that the 3rd Defendant's Further Counter Affidavit is an abuse of Court process because it is a process not backed by law. In the 3rd Defendant Reply on point of law the Counsel relied on the case of **KLM ROYAL DUTCH AIRLINES V. ALOMA (2018) 1 NWLR (PT.1601) 473 AND KANO TEXT PLC V. GH (NIG.) LTD (2002)2 NWLR (PT.751) 420** to argue that the rules of court are handmaids of justice so that where strict adherence to the rules will occasion injustice, the court will lean in favour of doing substantial justice. He concluded by explaining that the

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mere fact that an application is filed after an opposing party has challenged the competence of a process does not, without more, render the application an abuse of court process.

RESOLUTION OF THE ISSUE

Having carefully studied the processes of both the 3rd Defendant/Applicant and the Plaintiff/Respondent and the submission of their Counsel, I am of the opinion that the sole issue formulated by each of the parties contesting this application are similar. However, the issue raised by the Plaintiff/Respondent is more concise. I will therefore adopt the issue formulated by the Plaintiff/Respondent for determination, which I believe covers the issue raised by the other Counsel. The sole issue is the question;

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Whether, having regard to the facts and circumstances of this case, the 3rd Defendant is entitled to the reliefs sought in the instant application?

To resolve the sole issue for determination it is important to examine the nature of pre-election/election matter.

It is trite that pre-election/election matter are sui generis. The next question that readily comes to mind is "what does that mean

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or imply?" some legal precedent has over the years shade light on the issue.

In the case of **NWOSU V. A.P.P. (2020) 16 NWLR (PT. 1749) 28 (P. 57, PARAS. D-E)** the Court earlier held;

> **"A pre-election matter is time-bound."**

In **LOKPOBIRI V. A.P.C. (2021) 3 NWLR (PT. 1764) 538 (SC)** it was held that;

> **"Election matters are sui generis and time is of essence. Section 285(9) of the Constitution (as amended) does not admit any elongation of time for any reason whatsoever."**

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In the case of **ADEYEMI V. A.P.C.(2024) 4 NWLR (PT. 1927) 63 (P. 116, PARA. C)"** the Apex Court held that;

> **"A pre-election petition is sui generis and is outside the normal genre of civil procedure and is in a class of its own."**

More recently the same Court in **AJAYI V. ADELAMI (2025) 20 NWLR (PT. 2022) 21 (P. 89, paras. E-H)** it explained it better, thus;

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"An election related case, pre-election or post-election action, is regarded as "sui generis", which means "of its own kind or class; unique or peculiar". Election matters have special characteristics or features of their own, quite different from ordinary civil cases and any statutory provisions relating thereto are strictly interpreted and applied by the Courts and/or tribunals. Thus, election cases or matters are sui generis and time bound. [BUHARI V. I.N.E.C. (2008) 19 NWLR (PT. 1120) 246; EHUWA V. O.S.I.E.C. (2006) 18 NWLR (PT. 1012) 544; NYESOM V. PETERSIDE (2016) 1 NWLR (PT. 1492) 71 referred to.]"

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The Federal High Court (Pre-election) Practice Directions in its Paragraph 3 enumerated the objectives and guiding principles of the practice directions which governors the substantive case as follows:

a. Provide for a fair, impartial and expeditious determination of pre-election cases;

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b. **Ensure that in all election matters, the parties focus on matters which are genuinely in issue;**

c. **Minimize the time spent in dealing with interlocutory matters;**

d. **Ensure that the possibility of amicable settlement is explored before the parties go into hearing;**

e. **Minimize undue adjournments and delays in the conduct of matters.**

It is in the light of the above listed and precedents vis a vis the facts and circumstance of this case that the sole issue in this application shall be resolved.

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As stated above the purpose of the Rules of Court and the practice directions that relates to this case is to **Provide for a fair, impartial and expeditious determination of pre-election cases** and that is exactly what the rules and the practice direction has done. To give each party fair hearing, however within an ascertainable and defined time frame, Sequence and procedure. See **Paragraph 7 of the Federal High Court (Pre-election) Practice Directions 2026**.

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In the Case of **GOVERNOR OF KOGI STATE V. SIMON (2026) 7 NWLR (PT. 2041) 127 AT 147-148, PARAS. E-F** it was held that;

> **"Where the Rules of Court has not made provisions for a process, the Court of law will have no jurisdiction to entertain it. A court of law is enjoined to take judicial notice of the contents of its Rules of Court. A Court of law can only hear a party within the Confines of the rules of Court, that is within the ambits of the Rules of Court. It is within the ambit of the Rules of Court to disregard any process that is not dependent or predicated on the provisions of its Rules."**

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Just like the 3rd Defendant/Applicant admitted what the Practice Directions provided for in exactitude was for the Originating Summons with an Affidavit, a Counter-Affidavit by the Defendant(s) and a Reply by the Plaintiff (in the spirit of the purpose the practice direction one can say) and nothing more. So much that even where there is need for amendment the leave of the Court ought to be sought in order to effect such an amendment.

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The pre-supposition by the 3rd Defendant that the "Plaintiff will have the opportunity to respond to his Further Counter Affidavit, if he so wishes" is erroneously conceived. The Court is not open for the parties to keep filing processes at their whims and caprices. In the least not in a pre-election matter and certainly not in this case.

The intention is to streamline or restrict what is being thrown in into the Court in the course of the already clearly defined time line and procedure of the pre-election matter. And just like the 3rd Defendant Counsel rightly mentioned to make sure that the parties to the proceedings focus on matters which are genuinely in issue in the substantive case.

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The 3rd Defendant's alarm of fair hearing as loud as it may sound does not exist in a vacuum. Especially not in our structured adversarial/adjudicatory legal system not to talk of in a pre-election matter which is designed to be sui generis. It is design to give each party an enough opportunity to state their case in order to put in it perspective but not an open do, to over flog it, nor to introduce or join issues on matters that would not help the Court in determining the genuine issues in the pre-election matter.

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The crux of the 3rd Defendant's grounds, deposition and argument in persuading the Court to grant his motion is that the Plaintiff's Further Affidavit contains new facts and matters raised in Paragraph 7 – 42 and that they relate to grave allegations of irregularity and alteration of the 3rd Defendant's **Exhibit A004.**

I have gone through the said Further Affidavit of the Plaintiff I could not find the necessarily new facts, matters or issues raised therein other than comments on exhibits that are before the Court and the issue(s) which are already presented in the Plaintiff Originating Summons. The same issues that the Defendants had ample opportunity to address in their Counter-Affidavit and written address. Whatever it is that the Plaintiff deposed to in his Further Affidavit it cannot speak any louder that the documents in question (which are before the Court) would speak for themselves. In the case of **SAIDU V. ABUBAKAR (2008) 12 NWLR (PT. 1100) 201 (SC) (P. 301, PARAS. B-C)** it was held;

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"When a document is admitted in evidence it should be allowed to speak for itself. Every inscription on the document should attract the reasonable inference it deserves. In the instant

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case, the date on exhibit 'P6' is relevant and was meant to achieve a purpose."

More so whatever allegations the Plaintiff made in their deposition as far as they are not the facts on the genuine issue(s) before this Court they are irrelevant to this proceedings and this Court would not allow castles to be built on it to distract this Court or compound the work of this Court in determining this suit.

The issues submitted by the Plaintiff are clear and are devoid of criminal allegations. More so the issue between the parties in this pre-election matter and before the Court is not anchored on criminality. The court would not allow itself to be distracted by the sentiments of parties. Again I emphasize that election matters are sui generis.

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The more reason why the case of **ZENITH BANK PLC V. BANKOLANS INVESTMENTS LIMITED & ANOR (2011) LCN/4722(CA)** would not apply. This is especially true making the 3rd Defendant Application amount to placing the cart before the horse. For an application that is not contemplated by the rules, particularly the **Practice Directions** before throwing it in, a party ought to have first sought and had the leave of Court

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especially giving the sui – generis nature of pre-election matters. But the Applicant in this suit failed to seek the leave of this Court.

The above reasons are even the more reasons why the instant case is clearly distinguishable from the case of **SIR AMBROSE OYOVWE & 33 ORS V. APC & 2 ORS Suit No. FHC/CS/30/2026** delivered on 20th of July 2026 by this Court and relied upon by the 3rd Defendant/Applicant.

The process in question in that case was a Further Affidavit filed by the Plaintiffs' along with their Reply on point of law in reply to the Defendant's Counter Affidavit filed in opposition to the Plaintiffs' Originating Summons. The Defendants raised alarm contending that what the rules provides for was a "Reply" not a Further Affidavit. That the Plaintiffs need the leave of Court before filing their Further Affidavit and I said **NO**. "Reply" as provided in **Order 13 Rule 50 of the Federal High Court (Civil Procedure) Rules, 2019** could either be further affidavit, Reply on point of law or both and leave of Court is not needed to file same.

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But in the instant case, the process in question is not contemplated at all by the Practice Directions nor the rules of

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Court. It cannot come in as of right as even the nature of the instant suit does not permit it.

More as this application by the 3rd Defendant/Applicant filed on the 2th October, 2026 seems to be an afterthought. It seems to be a mere reaction to the Plaintiffs/Respondents' application filed on the 25th day of September, 2026 to have the Further Counter Affidavit in question struck out. In fact it was stated in the Affidavit in support of the 3rd Defendant/Applicant's motion that his application to regularize his process was brought out of the abundance of caution. Be that as it may, caution is not taken after the act but before it. The Applicant has pre-empt the Court, the act is done and in the circumstance I will not make an Order to take effect retrospectively and I so hold.

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From the foregoing it is manifest that the sole issue for determination is answered in the negative and therefore resolved against the Applicant and in favour of the Plaintiff/Respondent.

This application is hereby refused and same is accordingly dismissed.

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THE PLAINTIFF'S MOTION ON NOTICE DATED 25TH SEPTEMBER, 2026

This ruling is with regard to the Plaintiff/Applicant's Motion on Notice dated 25th day of September, 2026 and filled on the same date. The application is brought pursuant to the **Order 26 Rule 1 of the Federal High Court (Civil Procedure) Rules, 2019, Paragraphs 7(5) 7(6) 11(1) and 12(4) of the Federal High Court (Pre-election) Practice Directions, 2026** and Under the inherent jurisdiction of this Honourable Court, praying for the following reliefs:-

1. **AN ORDER striking out the 1st Defendant's 2nd Further Affidavit to the Plaintiff's Originating Summons, dated and filed on 13th August 2026, for being incompetent, irregularly filed and constituting an abuse of the process of this Honourable Court.**
2. **AN ORDER striking out the 2nd Defendant's Further Counter-Affidavit, dated and filed on 12th August 2026, for being incompetent, irregularly filed and constituting an abuse of the process of this Honourable Court.**

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3. **AN ORDER striking out the 3rd Defendant's Further Counter-Affidavit in Opposition to the originating Summons, dated and filed on 12th August, 2026, for being incompetent, irregularly filed and constituting an abuse of the process of this Honourable Court.**

4. **AN FOR SUCH FURTHER ORDER(S) as the Honourable Court may deem fit to make in the circumstance.**

The grounds upon which the Application is brought among others are as follows;-

1. **The procedure for the filing and exchange of processes in pre-election matters before this Honourable Court is governed by the Federal High Court (Civil Procedure) Rules, 2019 and the Federal High Court (Pre-election) Practice Directions (Amendment), 2026 which prescribe the nature, sequence and timelines for the filing of processes.**
2. **Upon the filing of the Plaintiff's Affidavit(s) in response to the Defendants' Counter-Affidavits, the exchange of Affidavit processes is closed, save where further processes are expressly permitted by the**

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applicable Rules, Practice Directions or by an order of this Honourable Court.

3. **The Defendants' respective further processes were filed after the completion of the prescribed exchange of affidavit processes and without the leave or order of this Honourable Court permitting their filing.**
4. **The said further processes, having been filed outside the prescribed procedural framework and without leave of Court, are incompetent, irregular and liable to be struck out.**
5. **This Honourable Court has the inherent jurisdiction and powers to regulate its proceedings, prevent abuse of its process and strike out processes improperly or irregularly filed before it.**

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The motion is accompanied by a 15 paragraphs Affidavit dated 25th September, 2026 deposed to by the Plaintiff/Applicant himself. Attached thereto is a written address dated 25th September, 2026. The Applicant also filed on the 7th day of October, 2026 two Further Affidavits and two replies on point of law all bearing the same date. The Further Affidavit in reply to the 2nd Defendant/Respondent's Counter Affidavit is a 5 paragraph Affidavit while the one in reply to the 3rd

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Defendant/Respondent's Counter Affidavit is 19 paragraph Affidavit respectively. The learned silk insisted that there must be an end to litigation and pleadings and there must be an end to Affidavit evidence. That the Court can decide the matter on **Exhibits 7, 14 and A004** before the Court.

At the hearing of the application on 21st October, 2026 **Dr. D.D. Dodo, SAN** learned Counsel for the Plaintiff/Respondent before adopting his processes withdrew the relief one (1) against the 1st Defendant as it was no longer tenable since the 1st Defendant have earlier withdrawn its Further Counter Affidavit in the substantive suit. He adopted his processes as his argument and prayed the court for the reliefs 2 and 3 as they appear on the motion paper.

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In opposing the application, the 2nd Defendant/Respondent filed a Notice of Preliminary Objection dated 2nd October, 2026. It is based purely on point of law. They also filed a Counter Affidavit of 5 Paragraphs with subparagraphs 4(i) to 4(xi), deposed to on the 2nd day of October, 2026 by Brenda Youmu a litigation clerk in the office of the 2nd Defendant Counsel; E.K. Omare & Co. They filed along with the Counter Affidavit a Written Address of Counsel dated 2nd October, 2026.

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O.O. Uzi, Esq. on behalf of the 2nd Defendant/Respondent adopted all their processes and urged the Court to dismiss same. He emphasized that the Plaintiff's motion was served in Court as on the day stated for hearing which violates the provision of the **Practice Directions, 2026**. See **Paragraph 8(1).** He also pointed out that the Plaintiff/Applicant did not exhibit any proof of service of the said Motion on Notice. He urged the Court in the interest of Justice and the Constitution to refuse the application and in the event the Court hold that the motion is competent, they rely on their Counter affidavit in opposition.

In opposing the application, the 3rd Defendant/Respondent filed a Counter Affidavit of 8 Paragraphs with subparagraphs 4 (a), 4(b)(i) to 4(b)(ix), deposed to on the 2nd day of October, 2026 by Rebecca Obenobe a litigation secretary in the employment of the 3rd Defendant Solicitor. They filed along with the Counter Affidavit a Written Address of Counsel dated 29th day of September, 2026.

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Dr. Onyechi Ikpeazu, SAN Learned Counsel for the 3rd Defendant/Applicant adopted his processes as his argument in opposing the application. Urged the Court to allow their process in so that all parties can be heard.

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ISSUES FOR DETERMINATION

Counsel for the Plaintiff/Applicant raised a sole issue for determination to wit:-

> **Whether the 1st Defendant's 2nd Further Affidavit to the Plaintiff's Originating Summons, the 2nd Defendant's Further Counter Affidavit and the 3rd Defendant's Further Counter Affidavit in Opposition to the Originating Summons are not incompetent and an abuse of court process?"**

The 2nd Defendant/Respondent raised two (2) issues for determination thus;

1. **Whether, having regard to the Federal High Court (Pre-Election) Practice Directions, 2026, the Plaintiff/Respondent's Motion on Notice filed on the 25th September, 2026 is competent and ought to be entertained by this Honourable Court?"**
2. **Whether having regard to the facts and circumstances of this suit the 2nd Defendant/Objector's Further Counter-Affidavit and Reply on points of law is incompetent, irregular or otherwise liable to be struck out?**

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The 3rd Defendant/Respondent also raised a sole issue for determination thus;

Whether from the circumstances of this case, the Plaintiff/Applicant is entitled to the grant of the reliefs sought?

ARGUMENTS OF COUNSEL

The Plaintiff/Respondent Counsel submitted that **Paragraph 7 of the Federal High Court Pre-Election Practice Directions (Amendment) 2026** and **Order 13 Rule 49 and 50 of the Federal High Court (Civil Procedure) Rules** have specifically prescribed the nature and sequence of processes to be filed and exchanged by parties in proceedings commenced by Originating Summons. Significantly, neither of the two above mentioned makes provision for or contemplates the filing or confers any automatic right on the Defendants to file any further process after service of the Plaintiff's Reply to their defence. He cited **OKOH V. FEDPOLY, BAUCH (2024) 15 NWLR (PT. 1961) 261 AT PAGE 288, PARAS F-G** to posit that it is trite principle of law that the express mention of a specific thing in a provision or rule is the exclusion of others unmentioned.

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Relying on the Court of Appeal Judgment in the case of **GOVERNOR KOGI STATE V. SIMON (2026) 7 NWLR (PT. 2041) 127 AT 147-148, PARAS. E-F** he posited that where the rules of court do not provide for a particular process, the Court of law will have no jurisdiction to entertain it.

He argued that in any event, the law is trite that where a party intends to file an Affidavit other than the one expressly provided for by the rules of the Court such Party ought to seek and obtain the leave of the Court before filing and relying on such Affidavit. Failure to seek the requisite leave renders the process so filed incompetent and liable to be struck out. He also cited **ARINZE V. NWOFIA (2000) 4 NWLR (PT.653) 464 AT PAGE 471 PARAS A-B, CA.**

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He relied on the case of **ONUBOGU V. ANAZONWU (2023) 17 NWLR (PT.1914) 425 AT PAGE 451 PARA D** to submit that it is settled law that pre-election matters are sui generis and time bound. He further cited **WELLINGTON V. P.D.P (SUPRA) 455 AT PAGES 481-482 PARAS H-A** to emphasize the need for strict compliance with the provisions of practice directions as they would be said to mirror the constitutional intention.

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THE ARGUMENT OF THE 2ND DEFENDANT/RESPONDENT COUNSEL

The 2nd Defendant/Respondent in response to the Plaintiff/Applicant's application argued that the said motion is incompetent and ought not to be entertained having regards to **Paragraph 8 of the Federal High (Pre-Election) Practice Directions, 2026.** He submitted that the Plaintiffs' motion was served on Counsel to the 2nd Defendant on Monday 28th September, 2026 being the date fixed for hearing of the matter therefore contravening the above mentioned provision. He cited the case of **TOURIST CO. OF (NIG) LTD V. NEO-VISTA PROPERTIES LTD & ORS (2022) LPELR-58910 (SC) @ (PP 23-24 PARAS D-B).**

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The Learned Counsel argued that **Paragraph 7 of the Practice Directions** contemplates the filing of a "Reply" by an Applicant in response to the defence served by a Respondent. It does not provide for the filing of a Further Affidavit by the Applicant in response to the Respondent's processes. The Plaintiff/Respondent's Further Affidavit, having introduced further facts and issues outside the procedural sequence contemplated by Paragraph 7, cannot properly form the basis for impugning the

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2nd Defendant/Objector's Further Counter-Affidavit filed in response thereto.

On the second issue the 2nd Defendant Counsel argued that assuming, without conceding, that prior leave was required, the alleged non-compliance does not automatically render the Further Counter Affidavit a nullity or constitute an abuse of the process of this Honourable Court. He relied on **Order 51 Rule 1 (1) of the Federal High Court (Civil Procedure) Rules, 2019** to aver that failure to comply with the requirements of the Rules as to time, place, manner, form, content or otherwise may be treated as an irregularity and, where so treated, does not nullify the proceedings or document. He referenced **UNITED BANK FOR AFRICA LTD V. NWORA (1978) LPELR-33401(SC)**.

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The 2nd Defendant Counsel cited series of cases to support his submission that a procedural rule ought not to be applied in a manner that elevates procedure above the Justice which the procedure is intended to serve. These cases included;

1. **NNEJI V. CHUKWU (1988) 3 NWLR (PT.81) 184**
2. **FAMFA OIL LTD V. ATTORNEY-GENERAL OF THE FEDERATION (2003) 18 NWLR (PT.852) 453**

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3. **ECN V. PSC INDUSTRIES LTD. & ORS. (2024) LPLR-80060(SC) PER HIS LORDSHIP ABIRU JSC.**
4. **FEDERAL GOVERNMENT OF NIGERIA V. ZEBRA ENERGY LTD. (2002) 18 NWLR (PT. 798) 162**
5. **POWER HOLDING CO. (NIG) PLC & ORS V. NWOGBO (2026) LPELR-83226(SC).**

The Counsel submitted that having averred too many new facts in the Further and Better Affidavit, it is within the 2nd Defendant's Constitutional right to fair hearing to challenge the new facts by way of a Further Counter Affidavit. Relied on **Section 36 (1) of the constitution of the Federal Republic of Nigeria, 1999 (as Amend)** and the case of **NEWSWATCH COMMUNICATIONS LTD. V. ATTA (2006)12 NWLR (PT. 993) 144.** and also cited the cases of **ISAAC V. GEORGE & ORS. (2013) LPELR-19994(CA); AGBAJE V. IBRU SEA FOODS LTD (1972) 5 S.C 50 AND EZECHUKWU V. ONWUKA (2006) 2 NWLR (PT.963) 151 AT 204-205; AKIODE & ORS V. OBI & ORS. (2021) LPELR-56005 (CA) at (PP 54 -56 PARAS C-F)**

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He submitted that Plaintiff/Applicant has not demonstrated any specific prejudice arising from the filing by the 2nd Defendant. In particular, the Plaintiff/Applicant has not shown that it has been

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deprived of a reasonable opportunity to answer the matters contained therein.

He further argued that procedural default, even where established, is not synonymous with abuse of court process.

He opined that if the Honourable Court is of the view that prior leave ought to have been obtained, the appropriate course is to regularize the process rather than strike it out.

In reply to the 2nd Defendant's Preliminary objection he submitted that a preliminary objection can only be brought to challenge the suit in its entirety and not against a singular process. He relied on the cases of **MURTALA V. INEC (2025) 7 NWLR (PT. 1989) 209 AT PAGES 284-285, PARAS H-A; ABIOYE V. ISMAIL (2023) 13 NWLR (PT 1902) 431 AT PAGE 473 PARAS. F-G**

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To urge the court to strike out the 2nd Defendant/Respondent's Preliminary Objection as it is wholly incompetent.

He argued that on the date the matter was fixed for hearing, all parties were present and represented in Court and, rather than challenge the propriety or competence of the service of the Motion on Notice, the parties consented to an adjournment of the proceedings to enable them file their respective replies to the

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Motion. That the parties by their conduct and failure to timeously raise any objection to the service or competence of the Motion on Notice when the matter came up for hearing, waived their right to subsequently challenge the propriety of the service.

The Counsel submitted in reply to 2nd Defendant's reliance on **Order 51 Rule 1(1) of the Federal High Court (Civil Procedure) Rules 2019** as well as the authorities cited in support thereof; that the provision is intended to operate in respect of otherwise competent processes which suffer from procedural defects relating to the time within which they were filed or the form or content of the process. That the provision cannot by any stretch, be invoked to breathe life into a process which is itself unknown to the applicable procedural framework, not contemplated by the Rules of Court and therefore fundamentally incompetent.

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Thus he argued by distinguishing that the processes in the case of **UNITED BANK OF AFRICA LTD V. NWORA (1978) LPELR-3401 (SC)** and the host of other cases relied upon by the 2nd Defendant was an otherwise competent process recognized by the Rules of Court but was merely filed out of time. Whereas the 2nd Defendant's Further Counter-Affidavit in the present case is not a process contemplated by the applicable

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Rules or procedural framework for the proceedings before this Honourable Court. It is therefore, unknown to the applicable rules and fundamentally incompetent, and cannot be rendered competent merely by resort to a provision dealing with an otherwise valid process filed out of time.

The Learned Counsel for the Applicant insisted that unlike in the case of **AKIODE AND ORS V. OBI & ORS. (2021) LPELR-56005 (CA)** in the instant case the 2nd Defendant neither sought nor obtained the leave of this Honourable Court before filing its Further Counter Affidavit.

More so he maintained that pre-election matters are sui-generis, with their procedures and proceedings strictly governed and regulated by specific and special enactments. He cited the cases of **JONATHAN V. INEC (2025) 3 NWLR (PT.1978) 1 AT PAGE 65, PARAS D-G; AUDU V. WADA (2016) 12 NWLR (PT.1527)382 AT PAGE 396, PARAS. F-G; LABOUR PARTY V. BELLO (2017) 2 NWLR (PT.1548) 145 AT PAGE 172, PARA. A,**

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The Learned Counsel submitted that Plaintiff/Applicant did not introduce a new case or seek to alter the substance of his case by the Further Affidavit. Rather, drew the attention of the Court to

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discrepancies and irregularities arising from the documents already before the court.

THE ARGUMENT OF THE 3RD DEFENDANT/RESPONDENT'S COUNSEL

On his part the 3rd Defendant/Respondent's Counsel Relying on the cases of **MATO V. HEMBER (2018) 5 NWLR (PT.1612) 258; OLAKEHINDE V. E.F.C.C. (2025)17 NWLR (PT.2014)241; OWURU V. ADIGWU (2018) 1 NWLR (PT.1599) 1; OBUMESELI V. UWAKWE (2019) 11 NWLR (PT.1715) 488** submitted that a party as in the instant case introduces new and material facts in a Further Affidavit, the opposing party must as of right, be afforded an opportunity to controvert those facts. Failing to respond to the Plaintiff/Applicant's allegation implies that he agrees with and accepts the facts deposed to in the Affidavit. He cited **OJO V. ABDULAZEEZ (2024) 6 NWLR (PT.1934) 341; MAGAJI V. APC (2024) 1 NWLR (PT.1918)1; NATIONAL ASSEMBLY V. ACCORD (2021) 18 NWLR (PT.1808) 193.**

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The 3rd Defendant/Respondent's Counsel reproduced more than a page excerpt of the Courts findings in the case of **ZENITH BANK**

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PLC V. BANKOLANS INVESTMENTS LIMITED & ANOR (2011) JELR 47564 (CA) with **Suit No. CA/L/946/08.**

The kernel of the above authority as it relates to this subject in issue is that; depending on the circumstance of each case, where there are new facts introduced in an Affidavit of an adverse party, in as much as the rules did not expressly shot the door against further kinds of Affidavits not listed in the rules, the aggrieved party will be prejudice if not allowed to exercise a right of Reply.

The Learned Silk sought to make a distinction between the case of **GOV. KOGI STATE V. SIMON (2026) 7 NWLR (PT.2041) 127** as well as **ARINZE V. NWOFIA (2000) 4 NWLR (PT.653) 464** and the instant substantive case in that in the first case the Applicant has the right to file a Reply but rather unmindfully elected to file a Further and Better Affidavit. Therefore the Court faulted the process whereas in the 3rd Defendant's case the Further Counter Affidavit is synonymous to a Counter Affidavit which is in fact expressly provided for in the Rules and Practice Directions.

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With regards to the latter case above the Learned Silk posited that the case is not helpful to the Plaintiff/Applicant in this case as the subject matter of the Courts pronouncement does not

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relates to Affidavit as in the present case and more so that the 3rd Defendant herein as of right is entitled to respond to the new allegations and issues raised by the Plaintiff in his Further Affidavit.

The 3rd Defendant/Respondent's Counsel insisted that a party should not be allowed to create a litigious quagmire by introducing new facts and then turn around to complain that the responses elicited by those facts are outside the stipulated periods and thus incompetent. Citing the cases of **NWOSU V. APP (2020) 16 NWLR (PT.1749) 28 PDP V. SHERRIF (2017) 15 NWLR (PT.1588) 219** he mentioned that, "he who comes to equity must come with clean hands".

He concluded by submitting that no material has been placed before this Honourable Court indicative of an abuse of the Court's process on the part of the Respondents herein to warrant the exercise of the Court's discretion to grant the Plaintiff/Applicant's application.

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In reply to the 3rd Defendant/Respondent arguments the Counsel for the Plaintiff/Applicant maintained that it did not introduce any new facts alien to the 3rd Defendant's Counter-Affidavit. He insisted even if that was the case the 3rd Defendant cannot file

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Further Counter Affidavit as of right because it is not provided for in the Practice Directions. He further places reliance on the position of the Court as seen on **page 147 Para. B** of the case of **GOVERNOR KOGI STATE V. SIMON (2026) 7 NWLR (PT. 2041) 127.**

The Learned silk argued that contrary to the opinion of the 3rd Defendant's Counsel, though it is correct that the provisions **Order 6 (1) of the Court of Appeal Rules** was specifically reviewed in the above mentioned case; the decision of the court transcends the provisions of the Court of Appeal Rules.

He also pointed out that the above mentioned case relied upon by the Plaintiff was decided later in time than the case of **ZENNITH BANK PLC V. BANKOLANS INVESTMENTS LIMITED & ANOR (2011) JELR 47564 (CA)** relied upon by the 3rd Defendant. He further argued that the case of **ADAMU V. NIGERIA AIRFORCE (2022) 5 NWLR (PT.1822) 159** heavily relied upon by the 3rd Defendant is adverse to the latter's case. This according to the Learned Counsel is because the Court in that case held that an abuse of Court process includes where there is no iota of law supporting a Court process.

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RESOLUTION OF THE ISSUES

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Having carefully studied the processes of all the parties to this application and the submission of their Counsel, I am of the opinion that the issues formulated by each of the parties contesting this application are from their respective perspective of the application however the resolution of each will result to a two way alternative effect of either granting the reliefs sought in the application or refusing same. I would therefore harmonize the issues into three thus;

1. **Whether the Respondent to an interlocutory application under a substantive suit can file a preliminary objection against such an interlocutory application.**
2. **Whether, having regard to the provision of Paragraph 8(1) of the Federal High Court (Pre-Election) Practice Directions, 2026; the Plaintiff/Respondent's Motion on Notice filed on the 25th September, 2026 is competent and ought to be entertained by this Honourable Court?**
3. **Whether having regard to the facts and circumstances of this suit the 2nd Defendant's Further Counter Affidavit and the 3rd Defendant's Further Counter Affidavit in Opposition to the**

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Originating Summons are not incompetent irregular or otherwise liable to be struck out?

Issue 1 and 2 above are formulated to address the issues emanating from the 2nd Defendant's Notice of Preliminary Objection. Especially that the said issue 2 is essentially a modification of the 2nd Defendant's issue 1 which obviously emanated from the 2nd Defendant's Notice of Preliminary Objection filed against the Plaintiff/Applicant's Motion on Notice.

Giving the interdependence of issue 2 on issue 1 the resolution of issue 1 would more or less determine issue 2 one way or the other.

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ISSUE ONE

1. **Whether the Respondent to an interlocutory application under a substantive suit can file a Preliminary Objection against such an interlocutory application.**

The alternative way to look at issue 1 is to answer the question as to **"what is the appropriate process to be filed by a**

Respondent to an interlocutory Application brought under a substantive suit."

It is trite that the appropriate process to file in court in opposition to an interlocutory application is a counter affidavit accompanied by a written address. See the combine effect of **Paragraph 3(2); 12(2) and Order 26 Rule 4 of the Federal High Court (Civil Procedure) Rules 2019.**

It is alien to our rule of practice even in normal Court proceedings for a Respondent to file a Preliminary Objection to Motion on Notice instead of a Counter Affidavit and a Written Address.

In the case of **MURTALA V. INEC (2025) 7 NWLR (PT.1989) 209 AT PAGES 284-285, PARAS. H-A** it was held that;

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"Invariably, the term Preliminary Objection denotes an objection to the competence of the case or jurisdiction of the court, that if upheld would render further proceedings before the Court or tribunal impossible or unnecessary."

In the case of **L.L.S.P.I.A. LTD. V. MT TUMA (2021) 10 NWLR (PT. 1784) 347 (PP. 397, PARA. A; 398, PARAS. B-C)** the apex held that;

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"The purpose of a Preliminary Objection is to show that a case is fundamentally defective and if successful, it terminates the proceedings."

The point is that Notice of Preliminary Objection are usually targeted at the substantive suit whether began by Writ of Summons, Originating Summons, Originating Motion or by Petition but not against interlocutory motion filed in the substantive suit.

To allow this is to permit needless multiplicity of processes in the Court file and unnecessary prolonging of proceeding.

On the basis of the above stated I hereby refuse to entertain the purported Notice of Preliminary Objection by the 2nd Defendant/Respondent as it is incompetent and a mere multiplicity of processes and the waste of the Court's time. This is a pre-election matter for goodness sake. Time is of essence.

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Issue one is therefore answered in the negative and in favour of the Plaintiff/Applicant.

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ISSUE TWO

Whether, having regard to the provision of Paragraph 8(1) of the Federal High Court (Pre-Election) Practice

Directions, 2026; the Plaintiff/Respondent's Motion on Notice filed on the 25th September, 2026 is competent and ought to be entertained by this Honourable Court?"

Having answered issue 1 in the negative and knowing issue 2 emanated from the Notice of preliminary Objection addressed under issue 1 it would be needless to spill too much ink on this issue 2.

I would simply make it clear here that the 2nd Defendant had already made a waiver on his right to object the alleged service of the instant Motion on Notice on its Counsel, on the earlier date it was slated for hearing by consenting to an adjournment to enable them respond to the motion or even by the mere fact that the proceedings did not go on that date (26th September, 2026) as intended. Effect of **Paragraph 8 (1) of the Federal High Court (Pre-Election) Practice Directions, 2026** has been over taken by time and event. It is no longer potent in the circumstance of this case.

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Therefore the second issue is answered in the affirmative and in favour of the Plaintiff/Applicant.

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I wish to correct the 2nd Defendant Counsel's manifest misconception that "Reply" as provided for in **Paragraph 7 of the Federal High Court (Pre-Election) Practice Directions** only mean "Reply on point of law" and not the filing of Further Affidavit by the Applicant in response to the Respondent's Counter Affidavit. See Paragraph 3.4 and 3.5 of the Written Address of the 2nd Defendant/Respondent's Counsel.

"Reply" as provided for in the Practice Directions does not mean Reply on point of law but also a Further Affidavit by the Applicant especially that affidavit evidence in actions began by Originating Summons like the instant case is the substitute for pleadings in actions began by Writ of Summons. Therefore a Further Affidavit in this case is synonymous to a Reply filed in response to a Statement of Defence in suit began by Writ of Summons.

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According to the **Eleventh Edition of the Black's Law Dictionary by Bryan A Garner at page 1414** "Reply" in common law pleading means the Plaintiff's response to the Defendant's plea or answer. The Reply is the Plaintiff's second pleading. The dictionary also states that a Reply is followed by the Defendant's rejoinder. But unfortunately a rejoinder is unknown in our rules of practice in Nigeria. In variably pleadings

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in Nigeria ends with a Reply especially in pre-election matters as in the instant case since they are being sui generis.

ISSUE THREE

Whether having regard to the facts and circumstances of this suit the 2nd Defendant's Further Counter Affidavit and the 3rd Defendant's Further Counter Affidavit in Opposition to the Originating Summons are not incompetent, irregular or otherwise liable to be struck out?

It is apt and efficient to mention here that the 3rd Defendant's application earlier decided in this suit is just the other side of the same coin as the instant application under consideration; in that while the earlier decided application, though it was filed later in time sought to preserve the 3rd Defendant's Further Counter Affidavit the instant application seeks to have both the 3rd Defendant and the 2nd Defendant Further Counter Affidavit struck out.

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In the light of the foregoing the effect of the determination of the earlier decided application is for all weather applicable in the instant application.

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To spill much ink here is to more or less repeat myself which is unnecessary and to hold otherwise is to contradict myself, which I equally refuse to do.

Therefore the 2nd Defendant's Further Counter Affidavit which shares similar features as that of the 3rd Defendant in the circumstance of this case suffers the same fate as the latter. Except that the 2nd Defendant's Further Counter Affidavit is even more in a precarious situation in that even as much the 2nd Defendant's Counsel makes the argument that in the worst case scenario their Further Counter Affidavit suffers a mere irregularities that ought to be regularized and not struck out; unlike the 3rd Defendant who filed a motion to regularize, the 2nd Defendant filed no application to have his process regularize. It therefore manifest that the 2nd Defendant gambled with the thought that they are entitled as of right to file a Further Counter Affidavit in a pre-election matter as of right. To such an erroneous opinion, I again say NO.

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Consequently the issue 3 is answered in the affirmative and it is resolved in favour of the Plaintiff/Applicant.

I therefore Order as follows;

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AN Order is made striking out the 2nd Defendant's and 3rd Defendant's Further Counter Affidavit for being incompetent.

This is the ruling of this Court.

No order as to cost.

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THE 2ND DEFENDANT'S PRELIMINARY OBJECTION

By Notice of Preliminary Objection dated 8th July, 2026 and filled on the same date brought pursuant to **Order 29 rule 1 of the Federal High Court (Civil Procedure) Rules 2019, Section 258 of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended)** and under the inherent Jurisdiction of this Honourable Court. The 2nd Defendant/Applicant prays for the following reliefs:-

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1. **AN ORDER of this Honourable Court striking out this suit in limine for want of the requisite jurisdiction.**
2. **AN FOR ANY FURTHER OR OTHER Order as this Honourable Court may deem fit to make in the circumstance.**

The grounds upon which the Application is brought are as follows;-

1. **The subject matter of the action concerns the nomination, sponsorship and other matters relating to the internal affairs of the 2nd Defendant, a political party, which are not justiciable.**
2. **The Plaintiff's complaints, as they relate to the validity of the 3rd Defendant's membership of the 2nd Defendant, are matters within the exclusive domain and internal administration of a political and are not justiciable.**
3. **By virtue of Section 83(5) of the Electoral Act, 2026 this Honourable Court is expressly divested of jurisdiction to entertain any or matter pertaining to the internal affairs of a political party.**
4. **The Plaintiff lacks the requisite locus standi to institute and maintain this suit.**
5. **The Plaintiff's suit seeks to introduce additional grounds of qualification and/or disqualification for the nomination and sponsorship of a candidate beyond those exhaustively prescribed by the constitution of the federal Republic of Nigeria, 1999 (as Amended).**

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6. **The extent to which the Plaintiff invites this Honourable Court to construe Section 77 of the Electoral Act, 2026 as imposing an additional constitutional qualification or disqualification for elective office, such construction is inconsistent with the constitution of the Federal Republic of Nigeria, 1999 (as Amended).**
7. **The Plaintiff's Originating Summons discloses no reasonable cause of action against the Defendants.**
8. **The Plaintiff's claims being founded on an erroneous and legally unsustainable construction of section 77 of the Electoral Act, 2026, which neither creates and additional constitutional qualification nor imposes a further ground of disqualification for the nomination or sponsorship of a candidate for election.**

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9. **The suit, as presently constituted, is incompetent, and this Honourable Court consequently lacks the jurisdiction to entertain or determine same.**

At the hearing of the Preliminary Objection on 21th October, 2026, **O.O.Uzzi, Esq.** Learned Counsel for the 2nd Defendant/Applicant adopted his processes as his argument and urged the Court to dismiss the Originating Summons and the

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Counter Affidavit and apply the provisions of **Section 83(5) & (6) of the Electoral Act 2026.** Counsel asked for ₦20,000,000.00 upon the dismissal of the suit.

The argument proffered by the 2nd Defendant in support of its Preliminary Objection is captured under its submissions in arguing her issue 1 in its written address in support of its Counter Affidavit in opposition to the substantive suit.

The said issue 1 is couched thus;

> **Whether having regard to the facts disclosed in this suit and the applicable law, this Honourable Court is vested with the requisite jurisdiction to entertain and determine this suit.**

This same issue was adopted by the Plaintiff in his reply to the 2nd Defendant and argued accordingly.

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THE ARGUMENT OF COUNSEL ON THE 2ND DEFENDANT PRILIMINARY OBJECTION

The Counsel to the 2nd Defendant submitted that having regard to the Plaintiff's Originating Summons, the questions formulated for determination, the reliefs sought, and the Affidavit in support thereof, this action suffers from fundamental defects which

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render it incompetent, thereby depriving this Honourable Court Jurisdiction to entertain the suit.

He argued even though the Plaintiff tried to divert attention from that fact the substance of the Plaintiff's action is a direct challenge to the 2nd Defendant's decision to nominate and sponsor the 3rd Defendant for the election. That the law is firmly settled that the nomination, selection and sponsorship of candidates for elective office are matters within the exclusive domestic and internal affairs of a political party and such, by virtue of **Section 83 (5) of the Electoral Act, 2026** the Court has no jurisdiction to entertain any suit or matter pertaining to the internal affairs of a political party. He submitted that the Courts have consistently declined jurisdiction to interfere with such political decisions except where jurisdiction is expressly conferred by statute. To drive home the above point the Learned Counsel cited series of judicial authorities as follows;

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1. **ENANG V. ASUQUO & ORS. (2023) LPELR-60042 (SC)**
2. **UBA V. OZIGBO & ORS. (2021) LPELR-56672(SC)**
3. **APGA V. ANYANWU (2014) 7 NWLR (PT.1407) 541**
4. **AGI V. PDP(2017) 17 NWLR (PT.1595) 386**
5. **OLI V. INEC & ORS (2023) LPELR-60587(SC)**
6. **NDUKWE V. AYU & ORS (2022) LPELR-58905 (SC)**

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7. **AMAECHI V. INEC & ORS (2008) LPELR-446 (SC)**
8. **MANASSEH V. GOSHWE & ORS. (2024) LPELR-61673 (SC)**

The Learned Counsel for the 2nd Defendant further submitted that the Plaintiff has deliberately couched his complaint as one relating to the party register. However, stripped of semantics, the Substance of the Complaint touches on the issue of whether or not the 3rd Defendant was/is a member of the 2nd Defendant. Hence, the issue of the party register is therefore inseparable from the issue of the 2nd Defendant's Party membership, in this case.

He therefore argued that the law is firmly settled that the question of membership of a political party is also a matter exclusively within the domestic jurisdiction of the political party and is not justiciable. He relied on the cases; **TUMBIDO V. INEC & ORS. (2023) LPERLR-60004 (SC); ENANG V. ASUQUO & ORS. (SUPRA); AHIWE & ANOR V. INEC & ORS. (2024) LPELR-61674(SC); IFEANYI & ANOR V. INEC & ORS. (2024) LPELR-61713(SC); OLI V. INEC (SUPRA).**

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The Counsel also submitted that the Plaintiff lacks the locus standi to institute and maintain this action. He argued that by

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virtue of **Section 88(2) of the Electoral Act, 2026** the right of action is conferred only upon an aspirant who took part in the primary and complains that the Provisions of the Act or the Party's Constitution or Guidelines were not complied with in the nomination or selection of a candidate. He relied on several cases enumerated above. He also placed reliance on the recent case of **FAYEMI TOSIN BABATUNDE V. INEC & 4 ORS. SC/CV/229/2026 DELIVERED ON 22ND MAY, 2026, PER SANKEY, JSC.**

He insisted that in the instant case, the affidavit evidence placed before this Honourable Court does not disclose sufficient material to establish that the Plaintiff participated in the election he now seeks to challenge.

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He submitted that **SECTIONS 65** and **66 OF THE 1999 CONSTITUTION** (as amended) have made exhaustive provisions regarding the qualification and disqualification of candidates for election into the Senate.

That **Section 1(3) of the 1999 Constitution** particularly provided for the supremacy of the Constitution. He also relied on the case of **INEC V. MUSA (2003) LPELR-24927(SC) @ (PP36-37 PARAS D-C).** He further insisted that the above

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constitutional doctrine is supported by the doctrine of covering the field reaffirmed in the case of **MPPP V. INEC & ORS. (2015) LPELR-25706 (SC)** and **NIWA & ORS V. LASWA & ORS. (2024) LPELR-62198(SC).**

He argued that the Court in **APM V. INEC & ORS (2023) LPELR-59875 (CA) AT (PP 88-100 PARAS. D-A) PER SENCHI, JCA** held that **Sections 77(2) and (3) of the Electoral Act** do not deal with the qualification or disqualification of a candidate for election. That the constitutional requirement is simply that the candidate is a member of a political party and is sponsored by that political party.

Finally Counsel postulated that the Plaintiff failed to disclose a reasonable cause of action giving that the Plaintiffs proposition that the purported non-compliance with **Section 77 of the election Act 2026** constitutes a constitutional ground for invalidating the nomination and sponsorship of the 3rd Defendant.

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A position which he insisted do not holds sway, as a result of the authorities he relied upon and mentioned herein in the above preceding paragraphs.

In response to the 2nd Defendant's Counsel arguments, the Plaintiff's Counsel submitted that the instant case actually consist of the exceptions which the 2nd Defendants Counsel

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acknowledged in his Written Address. He relied on the case of **P.D.P V. LAWAL (2023) 12 NWLR (PT.1898) 205 AT P. 243, PARAS G-H,**

He pointed out that by virtue of **Section 285(14) (a) of the 1999 Constitution (as Amend)** the Constitution itself expressly confers jurisdiction on this Honourable Court. The Learned Silk insisted that once an aspirant complains that a political party failed to comply with the Electoral Act in the selection or nomination of its candidate, the dispute ceases to be a purely domestic affair and becomes a constitutionaly recognized pre-election matter over which this Honourable Court has jurisdiction.

Relying on the cases of **OSAGIE V PDP (2023) 5 NWLR (PT.1877) 355 AT PAGES 381 - 382, PARAS. C-B** and **P.D.P V. LAWAL (SUPRA).** He explained that the Plaintiff's case is founded on the alleged violation of **Section 77 of the Electoral Act, 2026** in the nomination of the 3rd Defendant, falls squarely within the jurisdiction expressly conferred by the Constitution and the Electoral Act.

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He argued that it is settled law that the question whether a Plaintiff possesses the requisite locus standi or the Court's jurisdiction is determined from the Plaintiff's originating process.

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And that in the instant case the Originating Summons has not shown otherwise. He cited **AONDOAKAA V. OBOT (2022) 5 NWLR (PT. 1824) 523 AT PAGE 574, PARAS. F-H**

The Learned Silk submitted that the Plaintiff made copious averments to the effect that he is an aspirant in the 2nd Defendant's primaries rather that controvert the material facts the 2nd Defendant merely advanced arguments in its Written Address. He insisted that argument of Counsel cannot counter evidence properly placed before the Court.

He insisted that since the 2nd Defendant did not specifically deny the Plaintiffs deposition that he participated in its Delta Central Senatorial District Primary Election as an aspirant, within the contemplation of **Section 88 (2) and 155 of the Electoral Act, 2026** those facts remain uncontroverted and deemed admitted in law. Therefore the Plaintiff is therefore clothed with the requisite locus standi to institute and maintain this action.

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He further insisted that the Plaintiff's complaint is expressly recognized by **Section 285 (14) of the 1999 Constitution and Section 88(2) of the Electoral Act 2026** discloses a valid and enforceable cause of action for which the law provides a remedy.

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THE 3RD DEFENDANT'S NOTICE OF PRELIMINARY OBJECTION

By Notice of Preliminary Objection dated 15th July, 2026 and filled on the same date brought pursuant to **Paragraph 12 of the Federal High Court (Pre-election) Practice Directions 2019, Section 6(6) 65(1) of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended) section 83(5) & (B)(6) of the Electoral Act 2026** and under the inherent Jurisdiction of this Honourable Court. The reliefs prayed for by the 3rd Defendant/Applicant are as follows:-

1. **FOR AN ORDER striking out this suit on ground that the Originating Summons was not signed by a legal Practitioner whose name is on the roll of Lawyers.**
2. **FOR AN ORDER striking out this suit on the ground that the Plaintiff has no valid cause of action for breach of Section 77 of the Electoral Act 2026.**
3. **FOR AN ORDER striking out this suit on the ground that it is not founded on the requirements of eligibility within the precinct of the Constitution of the Federal Republic of Nigeria 1999 (as amended).**

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4. **FOR AN ORDER striking out this suit on the ground that the Plaintiff's cause of action is not justiciable in as much as it is founded on the state of the register of the 2nd Defendant and a challenge to the membership of the 3rd Defendant/Applicant in the 2nd Defendant.**

5. **AN FOR ANY FURTHER OR OTHER Order as this Honourable Court may deem fit to make in the circumstance.**

The grounds upon which the Application is brought are as follows;-

1. **The Originating Summons was taken out by Marcel Eginine Esq. whereas the stamp affixed to it bears a different name.**
2. **The Plaintiff's/Respondent's Complaint is not founded on Constitutional legibility for the office of a Senator of the Federal Republic of Nigeria.**
3. **The Plaintiff/Respondents has no cause of action against the 3rd Defendant/Applicant.**
4. **The Plaintiff's/Respondent's assertion that the 3rd Defendant/ Applicant is not a member of the 2nd Defendant is not justiciable.**

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The motion was supported by a 4 paragraph Affidavit and was accompanied by a Written Address of counsel both dated 15th July, 2026. Upon being served with the Plaintiff's/Respondent's Counter Affidavit and Written Address, the 3rd Defendant filed a Further Affidavit of 3 paragraph and attached thereto is Reply of on point of law both dated 30th July, 2026 respectively.

At the hearing of the Preliminary Objection on 21st October, 2026, **Dr. Onyechi Ikpeazu SAN** Learned Senior Counsel for the 3rd Defendant/Applicant adopted his processes as his argument and urged the Court to uphold the objection.

The Plaintiff/ Respondent in response to the Notice of Preliminary Objection filed a 9 paragraph Counter-Affidavit dated 18th July, 2026 and deposed to by the Plaintiff himself. Attached thereto was a Written Address of counsel dated 18th July, 2026.

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D.D. Dodo, SAN adopted his processes and urged the Court to dismiss the Objection and consider the case on its merit.

The 3rd Defendant /Applicant formulated four (4) issues for determination thus;

1. **Whether the Originating Summons as signed and filed is not incompetent.**

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2. **Whether the Plaintiff has a cause of action against the 3rd Defendant/ Applicant with respect to an alleged breach of Section 77 of the Electoral Act, 2026.**
3. **Whether the Plaintiff's/Respondent's Originating Summons is founded on grounds outside the Constitutional eligibility and therefore incompetent.**
4. **Whether the Plaintiff's/Respondent's Claim is non-justiciable**

These same four (4) issues were adopted by the Plaintiff's Counsel in his Written Address and he argued same accordingly.

ARGUMENT OF COUNSEL ON THE 3RD DEFENDANT'S PRILIMINARY OBJECTION

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ON ISSUE ONE

The Counsel to the 3rd Defendant/Applicant submitted that the Originating Summons filed in this case was not signed and filed by a Lawyer who is known thus making it void or incompetent. He cited the case of **ASHAKA V. NWACHUKWU (2024) LPELR-61796(SC).**

The Counsel argued that while the Originating Summons was taken out by **Marcel Eginine, Esq.** it was not, however, signed

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by **Egbinine** which contains seven (7) letters as the stamp annexed to it did not embody the said **Eginine**. As confusing as his explanation seems the Counsel's contention is that **Eginine** is not the same as **Egbinine** therefore the former is unknown since the name is not on the roll of Legal Practitioners in Nigeria. He cited **Section 2(1) and 24 of the Legal Practitioner Act.** That as of the day of filing his contention it is too late for an amendment to save the Originating Summons, as the Constitutional 14 days for initiating the suit has already elapsed. He cited **Section 285(9) Constitution of the Federal Republic of Nigeria 1999 (as Amended)** and the case of **OSEGYOMON V. OJO (1993) 6 NWLR (PART 299)344 AT 361 PARA B-C.**

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ON ISSUE TWO

The Learned Silk argued that **Subsection 5 of section 77 of the Electoral Act, 2026** did not embody 21 days restriction. In other words, it did not specify that only those whose names are in the register 21 days before the election, shall vote and be voted for. According to him such drastic clause which is liable to restrict the constitutional rights of parties ought not to be inferred. He relied on the case of **LADOJA V. INEC (2007)**

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NWLR (PART 1047)119 AT 189 PARA B-H AND OBUSEZ V. OBUSEZ (2007)10 NWLER A (PART 1043) 438.

Relying on the interpretation of the Court in **APM V. INEC (2023) 9 NWLR (PART 1890) 419** the Learned Counsel posited that on a strict construction of **Subsection (4) of the Section 77,** it is manifest that the non-appearance of a person's name in the register of voters 21 days before the election should not affect the eligibility to contest an election.

In furtherance of his argument above and while acknowledging the restriction under **Subsection (6)**, he added that the penalty for non-compliance to the provisions is that; if a political party fails to submit the membership register within the stipulated time it shall not be eligible to field a candidate. That according to the Counsel is the sanction provided and none other. That in any case the Plaintiff has not sought that remedy. He relied on the case of **OVIAWWE V. IGIEBOR ANOR (2021) LPELR-56023 CA**

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ON ISSUE THREE

The Learned Silk argued that Originating Summons is not founded on **Section 65 nor Section 66 of the Constitution of the Federal Republic of Nigeria, 1999** which deals with grounds of disqualification. But squarely founded on **Section 77**

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of the Electoral Act, 2026 and nothing more. He submitted that any law which prescribes grounds of qualification for senate either in addition to, or subtraction from the standards established in **Sections 65 and 66 of the Constitution** derogates from the provisions of the **1999 Constitution.**

This he maintained is the concept of not only supremacy of laws captured in **Section 1 (1)** and **(3) of the 1999 Constitution,** but the doctrine of covering the field, with its constitutional implications. He cited the case of **A.G ABIA STATE V. A.G FEDERATION (2002) 6 NWLR (PART 763) 264 AT 391-392** where the Court's pronouncement on the doctrine of covering the field was restated in the case of **INEC V. MUSA (2003) 3 NWLR (PART 806) 72 AT PAGE 205 PARA C-F.**

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Based on the doctrine of covering the field as stated in **A.G ABIA STATE V. AG FEDERATION** (Supra) the Learned Counsel argued that the variation added in **Section 77 of the Electoral, Act, 2026** absolutely did not alter the fact that the law makers, without effecting an amendment of the constitutional eligibility introduce extraneous qualifying factors in the electoral Act.

ON ISSUE THREE

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The Learned Silk submitted that the 2nd Defendant having screened and placed the 3rd Defendant's name in the ballot had ascertained that he is their member. The contention of the Plaintiff that the 3rd Defendant is a member of APC is not Justiciable. The Parallel contention that the 3rd Defendant is not a member of the 2nd Defendant is equally not justiciable. This is for the reason that membership is a political question which only the Party may determine, and is therefore not justiciable. He cited the case of **A.P.G.A V. ANYANWU (2014) 7 NWLR (PART 1407) 541 AT 575 PARA D-F; 576 PARA B, 578 PARA B, 582 -583 G-A; AHIWE V. INEC (2024) 6 NWLR (PT. 1935) 437.**

Learned Silk posited that **Section 77 of the Electoral Act, 2026** deals with the corporate existence of a political party and its obligation to INEC in that regard. That the section ought to be read in conjunction with **Section 83** which deals with the monitoring of Political Parties. That if read together, it will be obvious that the violation of **Section 77** by a political party is a matter which ought to be redressed with INEC, which shall make such inquiries and give the appropriate directives and sanctions if need be.

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Finally he submitted that where a political party utilizes its register in the conduct of its primary, that process is internal to

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the party. Any breach in that respect by virtue of **Section 83 (5) of the Electoral Act, 2026** ought not to be brought to Court but taken to INEC for the necessary inquiry. Where brought to Court being internal to the party with a known redress, the sanction for the Plaintiff is the imposition of a fine of ₦10,000,000.00 (Ten Million Naira Only). He also relied on the case of **ENANG V. ASUQUO (2023) LPELR-60042 (SC).**

In response to the 3rd Defendant/Applicant Counsel's arguments on **the Issue One** the Plaintiff Counsel submitted that it is glaring that the 3rd Defendant's contention relates to the misspelling of the name of the Lawyer who took out the Originating Summons by the omission of one letter from his name. The defect complained of is merely a misnomer which does not go to the root of the Plaintiff's Originating Summons. He relied on the case of **S.P.D.C.N V. EKWEMS (2023) 4 NWLR (PT.1874) 213 AT PAGE 250, PARAS C-D** and **APGA V. UBAH (2019) 15 NWLR (PT. 1694) 25 AT PAGE 39 PARAS C-F SC.**

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He further insisted that it is trite law that a misnomer will not vitiate an action where the person misnamed is a juristic person in existence and there is no doubt as to the identity of such

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person. See **REGD. TRUSTEES, A.O.N V. N.A.M.A (2014 8 NWLR (PT.1408) 1 AT PAGE 31, PARAS. G-H.**

Placing reliance on the case of **FAMFA OIL LTD V. A.G. FEDERATION (2003)18 NWLR (PT.852)453 AT PAGE 472, PARAS. A-B** and the case of **NNAEMEKA V. INEC (2026) 1 NWLR (PT. 2024) 1 AT PAGES 55-65 PARAS. H-C** the learned Silk urged the Court to by-pass technicalities and do substantial justice as the mere misnomer due to human imperfection cannot justify the striking out of the Originating Summons.

ON ISSUE TWO AND FOUR

Plaintiff Counsel sought for leave to argue issue two and four together. The Plaintiff's Counsel submitted that the 3rd Defendant has complete misconception of the Plaintiff's case. He argued that a careful reading of the Originating Summons and the Affidavit in support thereof demonstrates that the Plaintiff is neither inviting this Honourable Court to determine who should be sponsored by the 2nd Defendant nor to pronounce on the membership of the 3rd Defendant simpliciter. Rather, they nominated the 3rd Defendant in flagrant violation of the mandatory provisions of the **Electoral Act, 2026.** He insisted that the complaint is expressly made

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justiciable by the Constitution and the Electoral Act. He relied on the following authorities; **SAKI V. APC (2020)1 NWLR (PT.1706) 515 AT PAGE 535 PARA. D; Section 285(14) (a) of the 1999 Constitution.**

He added that the settled rule that courts do not interfere in the internal affairs of political parties admits exceptions where jurisdiction is expressly conferred by the constitution or statute and that the Supreme Court in **PDP V. LAWAL (2023)12 NWLR (PT.1898) 205** restated both the general rule and the recognized exceptions. He also cited **OSAGIE V. PDP (2023) 5 NWLR (PT.1877) 355 AT PAGE 381-382, PARAS. C-B.**

ON ISSUE THREE

On the issue of qualification to contest in an election the Plaintiff Counsel misconceived the both the Constitution and the Electoral Act. He then submitted that **Section 77 of the Electoral Act** neither creates nor imposes any additional constitutional qualification for election. Rather, it merely prescribes the statutory procedure through which an existing constitutional requirement is to be demonstrated and verified.

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He therefore opined that **Section 77 (4)–(7) of the Electoral Act, 2026** derive their validity directly from the Constitution itself

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and cannot be said to contradict **Sections 65 and 66 of the Constitution**. Rather, they merely provide the statutory framework for regulating the internal nomination process of political parties and ensuring transparency, certainty and compliance in the conduct of party primaries.

Relying on the case of **S.C.E.S. LTD V. UMARU ADAMU ENT. LTD (2026) 10 NWLR (PT.2049) 291 AT PAGES 319-320 PARAS H-A** he insisted that where a statute prescribes the method of doing an act, that method and no other should be followed or any act done will be rendered a nullity.

The Learned Silk submitted that by virtue of the principle that a judicial decision is only an authority for what it actually decides and not for what may logically or remotely be deduced from it, as held in the case of **EDEDE V. A.G. FED (2025) 18 NWLR (PT. 2016) AT 108, PARAS. G.H;** the cases relied upon by the 3rd Defendant to wit **A.G. ABIA STATE V. A.G. FEDERATION (SUPRA) AND ANPP V. USMAN (SUPRA)** and even **INEC V. MUSA (SUPRA)** are inapplicable to the facts of the instant case.

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He finally postulated that the National Assembly, in the exercise of its constitutional powers under **Section 228 (a) of the Constitution,** has enacted the **Electoral Act, 2026** particularly

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section 77(4)-(7) which expressly cures the legislative gap that existed under the repealed Act by introducing mandatory provisions and prescribing the consequence of non-compliance.

In his Reply on point of law the 3rd Defendant's/Applicant's Counsel citing **OKAFOR V. NWEKE (2007) 10 NWLR (PT. 1043) 521 AND SLB CONSORTIUM LTD V. NNPC (2011) 9 NWLR (PT 1252) 317; FIRST V. MAIWADA (2013) 5 NWLR (PT.1348) 444** insisted that the identity of the person who actually signed the process is in doubt. That Court cannot speculate that both names refer to the same person.

Apart from the above stated I have read through the 3rd Defendant's supposed Reply on point of law and noticed that it was more or less a repetition of his earlier argument contained in his Written Address in support of his Motion on Notice. This ought not to be. An Applicant must not always file a **"Reply on point of law"** where there is no need for one. As doing so would only be compounding the Courts workload and a waste of the Court's precious time.

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DETERMINATION OF THE 2ND AND 3RD DEFENDANTS NOTICES OF PRELIMINARY OBJECTIONS

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For convenience, easy of comprehension and the avoidance of needless repetition the Notices of Preliminary Objection filed by both the 2nd and 3rd Defendants would be here under, determined together. This is having carefully gone through the processes of parties to both applications I notices that their respective arguments and especially the issues thereof are similar or overlap in certain respect.

I have also study the processes of all the parties particularly the Notices of Preliminary Objection and the grounds contained therein; the 3rd Defendant's/Applicant's Affidavit and Further Affidavit, the Plaintiff's/Respondent's Counter Affidavits and the parties' Written Addresses and found out that the issues formulated by the 3rd Defendant Counsel is both specific and elaborate enough that when resolved will also cover the sole issue raised by the 2nd Defendant. But that notwithstanding I would also briefly answer the 2nd Defendant's question since it presents a holistic view of all the issues raised. More so since the issues of both Defendants/Applicants were adopted by the Plaintiff/ Respondent.

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Therefore the issues are as follows;

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1. **Whether the Originating Summons as signed and filed is not incompetent.**
2. **Whether the Plaintiff has a cause of action against the 2nd and 3rd Defendants/Applicants with respect to an alleged breach of Section 77 of the Electoral Act, 2026.**
3. **Whether the Plaintiff's/Respondent's Originating Summons is founded on grounds outside the Constitutional eligibility and therefore incompetent.**
4. **Whether the Plaintiff's/Respondent's Claim is non-justiciable.**
5. **Whether having regard to the facts disclosed in this suit and the applicable law, this Honourable Court is vested with the requisite jurisdiction to entertain and determine this suit.**

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ISSUE ONE

Whether the Originating Summons as signed and filed is not incompetent.

The bone of contention here is that the absent of the letter of the alphabet **"B"** absent in the spelling of the name **EGBININE**

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there by rendering the name **EGININE** on the Originating Summons.

The contention of the 3rd Defendant is not that the Originating Summons was not signed nor that the there was no lawyer's seal on the Originating Summons but that the name of the person who took out the Originating Summon that is **Marvel Eginine** is not on the roll of Legal practitioners. Thus he insists that the said Originating Summons is incompetent and should be struck out.

Whereas the Plaintiff/Respondent have explained that the omission of the letter of the alphabet "B" in the contested name was a typographical error. That **Marcel Egbinine, Esq.** appearing on the Lawyers which is also acknowledged by the 3rd Defendant/Applicant and his Counsel and the name **Marcel Eginine, Esq.** refer to one and the same Legal Practitioner, whose stamp and seal was affixed to the Originating Summons. See paragraph 3(b) and (c) of the Plaintiff/Applicant's Affidavit in response to the 3rd Defendants' Motion.

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The 3rd Defendant has not put before this Court any material evidence proof that the name with the omission refer to a different person other than the Legal Practitioner whose stamp and seal is affixed on the Originating Summons. It is trite law that

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he who assert rest the burden of prove. See **Section 131 the Evidence Act, 2011 (as Amended); N.B.A. V. KOKU (2006) 11 NWLR (PT. 991) 431 (P. 451, PARAS. F-G).**

In the circumstance the explanation of the Plaintiff is more tenable and accords with reason. Moreover human beings as well the typist of the said process are not always paragons of circumspection to see every act or omission of theirs as deliberate and calculated even the one as minor as an omission of the letter "B" in a name that still sound similar to the Correctly spelled name. In the case of **NNAEMEKA V. INEC (2026)1 NWLR (PT.2024) 1 AT PAGES 55-56 PARAS. H-C** the Court held thus;

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> **"It is acknowledged that legal Practitioners are human and as such, are not infallible. They are susceptible to making errors and omissions in their professional duties, whether acting in the capacity of solicitor or advocate. Perfection is not attainable by any human being and it is understood that Counsel, while skilled and knowledge, may make mistakes due to their inherent humanity."**

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The very fact that the stamp and seal of the Lawyer is affixed and the Originating Summons is signed suffices to create the presumption so to say, that the omission of the letter "B" in the name in question is a typographical error as explained by the Plaintiff/Respondent. I have found no reason to think otherwise. More so the 3rd Defendant has not assisted the Court to ascertain the veracity of his allegation perhaps by providing the roll of legal practitioners in Nigeria which he alleges the name in question is absent nor any document to that effect.

I therefore answer issue one in the affirmative and resolve same in favour of the Plaintiff/Respondent.

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ISSUE TWO

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Whether the Plaintiff has a cause of action against the 2nd and 3rd Defendants/Applicants with respect to an alleged breach of Section 77 of the Electoral Act, 2026.

Foremost over the years the definition of the phrase cause of action mean has not change. In the case of **BELLO V. A.-G., OYO STATE (1986) 5 NWLR (PT. 45) 828** the Supreme Court held;

"Concisely stated, any act on the part of the Defendant which gives to the plaintiff his cause of complaint is a cause of action."

See also the case of **SAKI V. A.P.C (2020) 1 NWLR (PT.1706) 515 AT PAGE 535 PARA. D.**

In the case of **NDABA (NIG.) LTD. V. UBN PLC (2009) 13 NWLR (PT. 1158) 256** the Court of Appeal gave us a guide on how to determine whether a Plaintiff has a cause of action, thus:

"In order to determine whether or not a plaintiff's claim discloses a cause of action, the trial court must consider the pleadings in the statement of claim only, since at that juncture, no evidence has been adduced and where certain facts are not in dispute, the trial Court ought to so pronounce."

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A mere glance at the Plaintiff's Originating Summons shows that the Plaintiff is alleging the breach of **Section 77 (4) (5)** and **(6) of the Electoral Act, 2026** by the Defendants particularly the 2nd and the 3rd Defendants.

The above **Section 77** provides as follows;

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"(4) Each Political Party shall make such register available to the Commission not later than 21 days before the date fixed for the party primaries, congresses or conventions.

(5) Only members whose names are contained in the register shall be eligible to vote and be voted for in party primaries, congresses and conventions.

(6) A political party shall not use any other register for party primaries, congresses and conventions except the register submitted to the commission."

In the Plaintiff's Affidavit in support of the Originating Summons which can substitute for Statement of Claim the Plaintiff in his paragraph 25 averred that;

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"The 3rd Defendant Participated in the 2nd Defendant's Delta Central Senatorial District Primary Election notwithstanding that his name was not contained in the membership register submitted by the 2nd Defendant to the 1st Defendant."

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From the forgoing it is clear what the Plaintiff's complaint is about, even as I refuse to agree with the Defendants insinuations that seeks to drag the Plaintiffs complaint out of its alignment in order to press on the Court that the Plaintiff has no cause of action. As can be seen in the 2nd Defendant's argument at Paragraph 4.7 of its Written Address. Also at paragraph 4.02, 4.03 and 4.04 of the 3rd Defendant's Written Address in support of his Motion wherein his Counsel seems to dislocate the connecting joint that links each of **the subsections (particularly Subsection (4), (5) and (6)) of Section 77 of the Electoral Act, 2026** in the bid to arrive at the conclusion that the Plaintiff has no cause of action. The 3rd Defendant Counsel's argument in Paragraph 4.05, 4.06 and 4.07 of his Written Address is to my understanding too earlier and immaterial at this stage.

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The above established, it is important to remind ourselves that Section **285(14)(a) of the 1999 Constitution (as Amended)** provides for the definition of pre-election matter to mean;

> **"Any suit by an aspirant who complains that any of the provisions of the Electoral Act or any Act of the National Assembly regulating the conduct of primaries of political parties and the provision**

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of the guidelines of a political party for conduct of party primaries has not been complied with by a political party in respect of the selection or nomination of candidates for an election."

Furthermore **Section 88(2) of the Election Act, 2026** provides that;

"Notwithstanding the provisions of this Act or rules of a political party, an aspirant who complains that any of the provision of this Act and the guidelines of a political party have not been complied with in selection or nomination of a candidate of a political party for election, may apply to the Federal High Court for redress."

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The next question that readily comes to mind from the foregoing provisions is whether the Plaintiff is an aspirant or rather whether the Plaintiff has locus standi to institute this action.

I agree with the 2nd Defendant's Counsel that locus standi is threshold jurisdictional requirement and once a Plaintiff lacks the legal standing to institute an action, the Court is divested of jurisdiction to entertain same. See **LABOUR PARTY V. NNAJI &**

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ANOR (2023) LPELR-59426(CA); BOLAJI V. BAMGBOSE (1986) 4 NWLR (PT. 37) 632.

In the case of **AGUNSOYE V. AROJOJOYE (2023) 12 NWLR (PT. 1897) 137 (P. 166, PARAS. F-H)** it was held;

> **"Locus standi denotes the legal capacity to institute proceedings in court. It is a threshold issue that goes to the root of the suit. On no account should the merits of the case be considered before locus standi is decided. Locus standi affects the jurisdiction of the Court. Consequently, if the Plaintiff does not have locus standi to institute the suit the court would have no jurisdiction to entertain the suit. Usually, it is the Plaintiff that is questioned as to whether he has locus standi."**

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In the case of **AYOOLA V. BARUWA (1999) 11 NWLR (PT. 628) 595 (CA) (PP. 607, PARAS. A-B; 609, PARA. B)** the Penultimate Court held that;

> **"In determining whether a Plaintiff has the locus standi to institute a suit, the Court must look at his Statement of Claim and Writ of Summons. In the instant case where the Respondents did not**

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disclose any civil rights or obligations in their amended Writ of Summons, the trial court erred when it found that they had locus standi."

Even in the more recent case of **EJIRE V. NKPORNWI (2024) 18 NWLR (PT. 1969) 1** the Supreme Court held that;

"As a general rule, when the issue of locus standi or any other issue bordering on the jurisdiction of a Court is raised before evidence is led, the only processes to be considered by a court in the determination of whether it has jurisdiction are the originating processes and the reliefs sought therein. At that stage, no other process is relevant for the determination of the jurisdiction of the court. In the instant suit, where the action was commenced by writ of summons, the statement of claim must disclose the locus standi of the plaintiff. The challenge to the trial court's jurisdiction was raised by the appellants in limine. Hence, the Court of Appeal correctly held that the statement of claim was the sole determinant of whether the respondent had legal capacity or competence to institute the

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action. [NGERE V. OKURUKET 'XIV' (2023) 14 NWLR (PT. 1904) 361"

See also the case of **YARE V. N.S.W.I.C. (2013) 12 NWLR (PT. 1367) 173 (P. 195, PARAS. C-D)**

On the basis of the position of the Courts in the above cases and from my findings at this stage when the only process we are resorting to, so as to determine whether the Plaintiff has a cause of action or/and locus standi to bring this suit is the Plaintiffs' originating process; we can be sure that the Plaintiff made claims in his Affidavits accompanying his Originating Summons of being one of the participants in the 2nd Defendant's primary election as an aspirant for the Party's candidacy for the post of the Senator representing Delta Central Federal Constituency. See **Plaintiff's Exhibit 8 (A copy of my Expression of interest Form and the receipt of payment duly issued by the Defendant).**

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See also **the first Paragraph of the Plaintiff's Exhibit 11 (A copy of the Plaintiff's petition submitted to the 2nd defendant dated 30th of May, 2026).**

The said claim was not specifically and exhaustively denied by the Defendants even if the Court have to go beyond the limits as stated above to look at the 2nd Defendant's Courter Affidavits filed

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against the Originating Summons. Therein one would notice that **Paragraph 19** of the Plaintiff's Affidavit was particularly and tactically avoided by the 2nd Defendant. Even the denial of **Paragraph 34** that bears **Exhibit 11** was just a general and evasive denial as seen in paragraph 4 of the its Counter Affidavit.

More so the denial made by the 2nd Defendant in alleging that the Plaintiff was screened out and did not participate in its primaries is suspect. I have carefully look at the 2nd Defendants **Exhibit PAO** and I have reason to believe it was a document created for the purpose of this suit. A screening document which at the introductory part purported to have obtained the undertaking of the Plaintiff has no signature or any sign of the Plaintiff which should indicate his knowledge of it. The second paragraph of **Exhibit PAO** reads:

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"ATTESTATION

I ALEXANDER OSONGU AKPODIETE hereby accept to actively participate in the screening exercise. I undertake to abide by the outcome of the decision of the party through the screening committee. I also undertake to remain a member of the NDC regardless of the outcome of the screening exercise."

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And then the signature of the Plaintiff is nowhere to be found. This is apart from the fact that the document looks like what just anybody could have easily made from a roadside computer center.

On the whole **Exhibit PAO** is manifestly unreliable for this Court to use it as the basis to decide this issue to the contrary.

In the circumstance I am therefore satisfied that the Plaintiff is an aspirant in the 2nd Defendant's primary election and I so hold.

Assuming but not conceding the Plaintiff was denied the participation in the primaries as the 2nd Defendant claimed. Will the Jurisdiction of this Honourable Court be ousted as they argued in paragraph 4.24 of the Written Address? I don't think so.

In the case of **CHRISTIAN V. INNOCENT [2023] 13 NWLR 191 (SC) (PP. 206-207, PARAS. F-D)** it was held that;

> **"A political party must act within the bounds of the law and not in its own interest whether it is in the best interest of the Political party or not in nominating and sponsoring a candidate for general elections. To act in its own interest is no longer obtainable but to act in the interest of the law. When a political party acts in its own**

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interest and goes contrary to the law, the court has the jurisdiction to intervene even in its domestic or internal affairs. In the instant case, the 2nd Respondent deposed that the decision to forward the appellant's name instead of the 1st Respondent, which was duly published by the 3rd Respondent, was in the best interest of the party and that the 1st Respondent was under an obligation to respect the choice of the party as a candidate in line with commitment made by all the aspirants. The 2nd Respondent's in nominating the Appellant instead of the 1st Respondent, who won the primary election of 4/6/2022, wrong and ultra vires. UBA V. MOGHALU (2022) 15 NWLR (PT. 1853) 271 REFERRED TO."

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In the recent case of **P.D.P V. AUSTINE NWACHUKWA & 8ORS** Appeal No: **SC/CV/166/2026 (Page 25 Paragraph 8.3.3)** delivered on the 30th day April, 2026. The contention in that case was non-compliance to the **Electoral Act, 2022** the Regulations and Guidelines for Political Parties, 2022 as well as to ensure the compliance with the provision of the Constitution. The

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trial Court assumed jurisdiction and was affirmed by the Appeal Court and the Apex Court.

See also the case of **P.D.P V. SULE LAMIDO & 4 ORS** Appeal No. **SC/CV/164/2026** delivered on the 30th day of April, 2026 (unreported) where the Supreme Court held that;

> **"Political parties, though voluntary associations, are subject to the discipline of the law when their actions affect civil rights and obligations of their members and others. Internal democracy is not a slogan; it is a legal imperative. The Courts will not hesitate to intervene where party actions breach statutory or constitutional provisions."**

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In the above case the Plaintiff/1st Respondent was denied forms to participate in the Party's election of its National Executives. The Federal High Court assumed jurisdiction over the matter and was affirmed by both the Court of Appeal and the Supreme Court.

In the case of **TUKUR V. KUSADA 2024) 5 NWLR (PT. 1932) 511 (CA) (PP. 524-525, PARAS. F-A)** it was held thus;

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"While Courts have no business to dabble in the internal affairs of political parties, there is an exception that vests a court with the necessary jurisdiction to act on behalf of a disgruntled member of a political party. Where a party or member is able to show that the political party has not acted within or complied with statutory provisions such as the Constitution, the Electoral Act, the political party's constitution and its guidelines, then the court is empowered to intervene. In other words, the court would ensure that the political party acts within the law and comply with its own constitution and guidelines. ARDO V. NYAKO (2014) 10 NWLR (PT.1416) 591 referred to."

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The point is that there are, therefore, reasonable Cause of action in both or several fronts.

From the fore going it is manifest that the Plaintiff has cause of action and the locus standi to institute this action against the Defendants. Accordingly the Issue two (2) is resolved in favour of the Plaintiff and against the 2nd and 3rd Defendants.

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ISSUE THREE

Whether the Plaintiff's/Respondent's Originating Summons is founded on grounds outside the Constitutional eligibility and therefore incompetent.

The crux of the 2nd and 3rd Defendant's/Applicant's argument on this issue is that the provision of **Section 77 of the Electoral Act** upon which the Plaintiff's suit is founded creates standards or requirement for qualification and disqualification outside the constitutional eligibility as provided under **Sections 65 and 66 of the 1999 Constitution** thereby making those provision a nullity in the light of the supremacy of the Constitution and doctrine of covering the field or in the least renders them into being toothless bulldogs. And as I relate to this case incapable of anchoring the Plaintiff's suit.

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Without over flogging the matter especially in view of the most recent Judgment of the Supreme Court on this issues; bearing in mind the doctrine of judicial precedent I will quickly state that I don't agree with the 2nd and 3rd Defendants/Applicants on their above stated postulations. They do not represent the law as it is.

In the case of **INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC) V. ZENNITH LABOUR PARTY SUIT**

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NO: SC/CV/495/2026 Delivered on the **24TH DAY OF SEPTMEBER, 2026** overturning the finding of the Court of Appeal held thus;

> **"Since S. 77(5)-(7) of the Electoral Act has not disqualified any member of a political party from contesting any general election, the question of whether it is conflict with Ss. 65, 66,106,107,131,137,142, 177 and 182 of the 1999 Constitution on the grounds for disqualification cannot arise. Therefore, the judgment of the Court of Appeal that S.77(5) – (7) of the Electoral Act is in conflict with Ss. 106, 107, 131, 137, 142 177 and 182 of the 1999 Constitution and is therefore void is wrong. Clearly the Court of Appeal wrongly nullified Ss. 77(5)-(7) of the Electoral Act. Its Decision nullifying Ss. 77(5)-(7) of the Electoral Act 2026 is set aside."**

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I think the problem with the 2nd and 3rd Defendants/Applicants submissions is that they pre-supposes that the provisions of Section 77 creates new and different qualification/disqualification criteria which is not so. Like the Plaintiff explained, the

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Constitution provided for the criteria for qualification and by virtue of the powers bestowed on the Legislature they made provisions in the **Electoral Act, 2026** for the procedure on how to ensure the criteria provided for in the Constitution are complied with and verified. I believe this is for democratic ends as well as for sanity and orderliness in politics.

The Supreme Court holds a similar view when it stated on the provisions of **Section 77** in question;

> **"...are clearly meant to ensure a fair and transparent conduct of party primaries, party congresses and party conventions. This is keeping with S. 228 of the 1999 Constitution..."**

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Moreover the Constitution is not a one stop all encompassing Law that provides for every minute aspect of the different spheres of our laws. That is why the legislature is saddled with responsibility to continue to make, modify, amend and update laws to meet the needs of the contemporary time. See **Section. 228 (a) – (b) of the 1999 Constitution (as Amended).**

Section 77 (4)-(6) of the Electoral Act is one of those amendments and does not usurp the field the Constitution has already covered.

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Flowing from the above consideration I hereby answer issue three (3) in the negative against the 2nd and 3rd Defendants and resolved in favour of the Plaintiff.

ISSUE FOUR

Whether the Plaintiff's/Respondent's Claim is non-justiciable.

As I stated before that the cause of action of the Plaintiff is easily discernable and ascertainable in the Plaintiffs Originating Summons. The bid by Defendants to twist same to suit their perspective so as to strangle life out of the Plaintiff's suit is unacceptable.

The case cited by the 3rd Defendant in the likes of **APGA V. ANYANWU (2014) 7 NWLR (PART 1407) 541; AHIWE V. INEC (2024) 6 NWLR (PT.1935) 437; ONUOHA V. OKAFOR (1983) 2 SCNLR 244; (1983)14 NSCC 494; ENANG V. ASUQUO (2023) LPELR 60042 (SC)** in as much as they may be good precedent they are in the circumstance misfired at the wrong cause of action. Those authorities do not apply to the circumstance of this case.

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The case of **APM V. INEC & ORS (2023) LPELR-59875(CA)** is no longer the law as oppose to or as much as the case of

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INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC) V. ZENNITH LABOUR PARTY SUIT NO: SC/CV/495/2026 Delivered on the **24TH DAY OF SEPTMEBER, 2026.** The former was decided on the bases on the provisions of the **Electoral Act, 2022** having only **Section 77 (1)-(3)** whereas the law is decided based on the current provisions of the **Electoral Act 2026** now having **Section 77 (1)-(7).**

What I understand the Plaintiff to be saying is quite simple; that there are provisions of the **Electoral Act 2026** specifically Under **Section 77 (4) – (6)** that the 2nd Defendant have failed to comply with, the 1st Defendant who is supposed to be a regulator and who is supposed to ensure compliance has done nothing about it, resulting to the emergence of the 3rd Defendant as the party Candidate. The findings of this Court in resolving issue two is not far fetch and they equally apply here; to the effect that the Plaintiff's claim is justiciable.

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It is resonate with logic how the 3rd Defendant seeks and urges this Court in paragraph 6.03 of his Written Address in support of his Motion of Notice to read **Section 77 of the Electoral Act, 2026** together with **Section 83** of the same Act in order to arrive at certain conclusion which though appealing to the 3rd

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Defendant do not accord with the Justice of this case. Whereas in another breath seeks to propose disjointed interpretation of the **subsections of Section 77 of the Electoral Act** as seen in paragraph 4.02, 4.03, 4.04 and 4.05 of his Written Address accompanying his Motion on Notice. Even those subsections are so connected that each subsequent provisions flows from and derives its potency from the previous subsection(s).

ISSUE FIVE

Whether having regard to the facts disclosed in this suit and the applicable law, this Honourable Court is vested with the requisite jurisdiction to entertain and determine this suit.

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For an appetizer let us have in perspective what the term jurisdiction entails.

CHUKWUMA ENEH, JSC (OF BLESSED MEMORY) IN IFEANYI CHUKWU OKONKWO V. DR. CHRIS NWABUEZE NGIGE & ORS (2007) LPELR-2485 (SC) simply defines it thus:

"Jurisdiction of a court has been judicially defined as a very fundamental and priceless "commodity in the judicial Process.

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It is the fulcrum, center piece, or the main pillar upon which the validity of any decision of any court stands and around which other issues relate. It cannot be assumed or implied, it cannot also be conferred by consent or acquiescence of parties".

Also on the source and limits of the jurisdiction of a court it was held in **COL. HALILU AKILU V. CHIEF GANI FAWEHINMI NO.2 (1989) LPELR-339 (SC):**

"The source of the statutory jurisdiction of the Court is of course the Statute itself, which will define the limits within which such jurisdiction is to be exercised"

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It is clear from the above authorities that jurisdiction is bestowed on a court by either the Constitution or the enabling statutes.

I have previously reproduce in this ruling while resolving issue two (2) the provisions of **Section 285 (14)(a) of the 1999 Constitution (as Amended); Section 88(2) of the Electoral Act, 2026** as well as cited a number of case laws that supports this Court's Jurisdiction having regard to the facts disclosed in this suit and the applicable law.

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The said cases included;

1. **CHRISTIAN V. INNOCENT (2023) 13 NWLR 191 (SC) (PP. 206-207, PARAS. F-D).**
2. **TUKUR V. KUSADA (2024) 5 NWLR (PT. 1932) 511 (CA)(PP. 524-525, PARAS. F-A).**
3. **P.D.P V. SULE LAMIDO & 4 ORS Appeal No. SC/CV/164/2026 delivered on the 30th day of April, 2026 (unreported).**
4. **INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC) V. ZENNITH LABOUR PARTY SUIT NO: SC/CV/495/2026 delivered on the 24TH DAY OF SEPTMEBER, 2026.**

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The above cases are the recent position of the law as it applies to this case and by virtue of judicial precedent this Court is bound to abide by them. This issue is therefore answered in the affirmative and therefore resolved in favour of the Plaintiff and against the 2nd and 3rd Defendants.

Having come thus far, I am satisfied that this Court has sufficiently answered all the issues raised for determination by the Learned Counsel for the Defendants/Applicants and adopted by the Learned Counsel for the Plaintiff. Accordingly, the 2nd and 3rd

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Defendants' Notices of Preliminary objection have failed in its entirety and is hereby dismissed. The Originating Summons shall be heard on merit.

There is no order as to cost.

This is the ruling of this Court.

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JUDGMENT

THE SUBSTANTIVE SUIT

The Plaintiff's Originating Summons dated 09/06/2026 is accompanied by a 46 paragraphs Affidavit deposed to on the same date by Alexander Osondu Akpodiete, the Plaintiff himself. Filed along with it are several documents forming sets of Exhibits marked as follows;

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Exhibit 1 – Plaintiff's Permanent Voter's Card and membership card of the 2nd Defendant (NDC).

Exhibit 2 – 3rd Defendant's membership card of APC.

Exhibit 3 – The Revised Timetable and Schedule of activities for the 2027 general elections together with the application letter for its CTC.

Exhibit 3A – Notice of the 2nd Defendant's Senatorial Primary Elections issued to the 1st Defendant together with the application letter for its CTC.

Exhibit 4 – The Membership register for Orogun Ward 2 in Ughelli North Local Government Area of Delta State submitted by APC to the 1st Defendant together with the application letter for its CTC.

Exhibit 5 – Expression of Interest and Nomination forms of the 3rd Defendant for the Delta Central Senatorial District Primary Elections.

Exhibit 6 – 1st Defendant's Report on the Delta Central Senatorial District Primary Elections conducted by APC together with the application letter for its CTC.

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Exhibit 7 – The register of members submitted to the 1st Defendant by the 2nd Defendant for Delta State together with the application letter for its CTC.

Exhibit 8 – The Plaintiff's Expression of Interest Form and the receipt of payment for the form issued by the 2nd Defendant.

Exhibit 9 – The 3rd Defendant's resignation letter dated 22nd day May, 2026.

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Exhibit 10 – The 2nd Defendant's letter to the 1st Defendant submitting the names of the successful candidates of the 2nd Defendant from the Primary elections conducted by the 2nd Defendant on or about the 29th day of May, 2026 evidencing the participation of the 3rd Defendant together with application letter for its CTC.

Exhibit 11- The Plaintiff's petition submitted to the 2nd Defendant dated 30th day of May, 2026.

Accompanying the Originating Summons is a Written Address of Counsel dated 9/06/2026.

In response to the 2nd Defendant's Counter Affidavit, the Plaintiff filed 16 paragraphs reply affidavit deposed to by the said Plaintiff, along with 1 document marked **Exhibits PFA1** and a reply on points of law dated 15/07/2026.

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The Plaintiff also responded to the 3rd Defendant's Counter Affidavit by filing a 43 paragraph Further Affidavit deposed to by Plaintiff on 18/07/2026. Attached to the Further Affidavit is an exhibit marked **Exhibit 14A** –the situation report on the conduct of the Delta Central Senatorial District Primary Election of the 2nd Defendant. Accompanying same is a Reply on point of law dated 17/07/2026.

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At the hearing on 21st October, 2026, **Dr D.D. Dodo, SAN**, Learned Senior Counsel for the Plaintiff, adopted his processes, referring the Court to pages 19-33 of his Written Address; pages 4-18 of his Reply on point of law to the 2nd Defendant Written Address and Pages 8-22 of his Reply on Point of Law to the 3rd Defendant Written Address, urge the Court to grant all the reliefs sought in the Originating Summons.

In his oral adumbration the Learned Silk argued that from **Exhibits 4, 6,** and **9,** the fact that the 3rd Defendant participated in the APC primaries is not denied by the 3rd Defendant. The case is the impossibility of a sitting member of APC as 3rd Defendant who participated in the primaries on 18th May 2026 to have had his name contained lawfully and legitimately in the register of the 2nd Defendant in respect of primaries conducted by the 2nd Defendant on the 29th May, 2026. Submitted **Section 77 of the Electoral Act, 2026** talks of 21 days whereas the space between the two dates was only 11 days. He insisted that his contention that the 3rd Defendant could not by reason or logically have been in the register of the 2nd Defendant 21 days before the 29th day of May, 2026 is supported by **Exhibits 7** and **14.**

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He further insisted that the above exhibits showed that the name of the 3rd Defendant was not there in the register (**Exhibit 7** and

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14) obtained by the Plaintiff as against the illogicality of **Exhibit A004;** that claim that his name is in the register. The substance is, whether in the face of **Exhibits 4, 6** and **9** more weight should not be accorded to **Exhibits 14** or **7** than to the Defendant's **Exhibit A004**?

He urged the Court to be persuaded and find that it is logically impossible for the name of the 3rd Defendant to be legitimately found in **Exhibit A004** when the primaries of the 2nd Defendant was held and conducted on 29th day of May, 2026.

The 1st Defendant upon been served with the Originating Summons in this suit filed a 19 paragraphs Counter Affidavit. Accompanying it is a Written Address of Counsel dated the 8th day of July, 2026. They further filed a further Affidavit of 5 paragraphs on the 9th day of July, 2026. They again filed a 2nd Further Affidavit dated 13th August, 2026.

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Eruli-Ede, Esq. on behalf of the 1st Defendant applied to withdraw all the above processes filed by the 1st Defendant so that the effect would be that the 1st Defendant filed no process in the matter. Meanwhile the Counsel urged the Court to do Justice in the Case.

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Why the parties were not opposed to the 1st Defendant's application **Dr. Onyechi Ikpeazu, SAN** indicated that he would reserve his address on the issue of withdrawal of the 1st Defendant processes for later during his adumbration when adopting his processes.

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Accordingly the Court ordered as follows:

The 1st Defendant's processes as listed above having been withdrawn by its Counsel are hereby struck out.

Dr. D. D. Dodo SAN; Consequent upon the 1st Defendant's withdrawing his processes all processes filed by the Plaintiff in response to the 1st Defendant are all equally withdrawn.

Accordingly the Court ordered as follows:

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The Plaintiff's processes as stated above having been withdrawn by his Counsel are hereby struck out.

Upon receipt of the Originating summons, the 2nd Defendant filed a 17 paragraphs Counter Affidavit deposed to by one PHILLIP ADU-ODOGWU the Delta State Secretary of the 2nd Defendant. Attached thereto are two Exhibits marked as follows;

Exhibit PAO- NDC Aspirant Screening Report.

Exhibit PAO1- NDC Register of members.

Exhibit PAO2- Application for the CTC of NDC register of members.

Accompanying the Affidavit is a Written Address of Counsel dated 07/ 07/2026.

O. O. Uzi, Esq. Learned Counsel for the 2nd Defendant adopted his processes. In his oral adumbration he submitted that if person is not involved in preparing a document he cannot be allowed to give evidence of the content of same. He cited the case of **IKPEAZU V. OTTI (2016) LPELR-40055SC; FRN V. CHIBUIKE (2025) LPELR 80649 SC** and urged the Court to dismiss this Originating Summons and apply the provision of **Section 83(5) & (6) of the Electoral Act, 2026.** Like I stated earlier he ask for the cost of ₦20,000,000.00.

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In the same vain upon receipt of the Originating Summons, the 3rd Defendant filed a 22 paragraphs Counter Affidavit deposed to on the 15/07/2026 by **Senator Augustine Ovie Omo-Agege** the 3rd Defendant himself. Attached thereto are five (5) Exhibits marked as follows;

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Exhibit A001 – 3rd Defendant's letter of resignation from APC dated 5th day of May,2026.

Exhibit A002– 3rd Defendant's Membership card of the 2nd Defendant (NDC)

Exhibit A003- Application by the 3rd Defendant to be fashioned by the 1st Defendant the register of member of the 2nd Defendant.

Exhibit A004- NDC register of members

Exhibit A005 -Deposition that the APC received only **Exhibit A001** from the 3rd Defendant.

Accompanying the Affidavit is a Written Address of Counsel dated 15/07/2026.

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At the hearing **Dr. Onyechi Ikpeazu, SAN** adopted the 3rd Defendant's processes. In his oral adumbration he agreed that the matter is very simple but not dependent on the Exhibit presented by the Plaintiff. On his part he is relying on **Exhibit A001- A005** and on the Affidavit not controverted. He argued that INEC filed in this Court their exhibit (i.e the register they gave them). That **Exhibit B** in INEC's further affidavit is evidence before the Court and same cannot be withdrawn. He cited the following cases;

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1. **OMISORE V. AREGBESOLA 2015 15 NWLR PART 1482, 205.**
2. **SHARING CROSS EDUCATIONAL SERVICES LTD. V. UMARU ADAMU ENTERPRISES LTD. (2020) 10 NWLR (PT.1733) 561 AT 588.**
3. **BANKOLE V. PELU (1991) 8 NWLR (PT. 211) 523.**
4. **JOSIEN HOLDINGS LTD. V. LORNAMEAD LTD 1995 LPELR 1634 SC; (1995) 1 NWLR (PART 371) 254.**

He submitted that this matter is not a matter of sentiments but dependent on documents. The matter relies on 2 reliefs and contention.

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1. That at the material time the Defendant was a member of APC. See **Exhibit A004 and A001**- the Register and letter of resignation. These documents are summarized in **Exhibit A001-A005.**
2. If really the 3rd Defendant contested the APC primaries, obviously there is no way the 3rd Defendant's name will be in **Exhibit A007** (this was struck out together with incompetent Further Counter Affidavit).

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Dr. D.D. Dodo, SAN in reply to the submission of the 3rd Defendant's Counsel on the withdrawal of the 1st Defendant's processes, submitted that such a withdrawn Affidavit can be used only in subsequent proceedings.

Eruli-Ede, Esq. in reply to the submission of the 3rd Defendant's Counsel on the withdrawal of his processes referred the Court to the case of **U.A.C. (NIG.) LTD. V. GLOBAL TRANSPORTE S.A. (1996) 5 NWLR (PART 448) 291 AT 300-301 PARAGRAPH G-A.** and submitted that Affidavit struck out ceases to exist and cannot be relied upon. He further cited the cases of **YERINA V. BALAMI 2022 LPELR-72791 (CA); UBA PLC V. SRL BAUREAU DE CHANGE LTD 2022 LPELR-57898 CA.**

The above represents the processes of parties filed and exchanged in this case.

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BACKGROUND FACTS OF THE CASE

The Plaintiff is a card-carrying member of the 2nd Defendant that is the Nigeria Democratic Congress (NDC). The Plaintiff (an aspirant) who also participated in the 2nd Defendant's primaries for the election of the party's candidate to be field in 2027 General Election, for the post of the Senator to represent Delta Central Senatorial District alleges that the provisions of Section 77

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(5) & (6) of the Electoral Act has not been complied with by the Defendants. This is because they allowed the participation of the 3rd Defendant whose name he alleged was not in the register of members of the 2nd Defendant submitted to the 1st Defendant 21 days before the day the 2nd Defendant conducted its primaries on the 29th day of May, 2026.

ISSUES FOR DETERMINATION

Learned Counsel for the Plaintiff raised a sole issue for determination in his Written Address to wit;

> **Whether upon a proper construction and interpretation of the relevant provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as Amended) and the Electoral, 2026, the Plaintiff is entitled to the grant of the reliefs as sought on the Originating Summons.**

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On his part Learned Counsel for the 2nd Defendant raised two issues for determination how the 1st has already been resolved under the 2nd Defendant's preliminary objection. Therefore the remaining sole issue for determination is thus;

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Whether the Plaintiff has established any legal entitlement to the declaratory and consequential reliefs sought in this Originating Summons.

Learned Counsel for the 3rd Defendant has equally raised sole issue for determination as follows;

Whether the Plaintiff has established by the requisite evidence that the 3rd Defendant's name was not embedded in the Register of members of the 2nd Respondent submitted as required by Section 77 of the Electoral Act, 2026 for which reason the 3rd Respondent should be disqualified from contesting the election.

Foremost I noticed that in the course of the parties' oral adumbration an issue was raised by the Counsel for the 3rd Defendant as **whether an Affidavit already filed in a matter can be withdrawn and whether the Court can make use of withdrawn Affidavit evidence in determining the issues raised in the suit.**

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The above shall therefore be our first issue for determination. The said issue arose from the act of the 1st Defendant withdrawing all his process in the suit.

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I have also keenly study the issues raised by the parties contesting this application and have observed that though the questions would still lead to the same result, they are not as apt for the determination of this suit as issues that will be distilled from the questions submitted by the Plaintiff for resolution would. Therefore I shall adopt those questions contained in the Plaintiffs Originating Summons with modifications to free the issues for determination from the sentiments of any of the parties.

The issues for determination are reframed as follows;

1. **Whether an Affidavit already filed in a matter can be withdrawn and whether the Court can make use of withdrawn Affidavit evidence in determining the issues raised in the suit.**

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2. **Whether, having regard to the provisions of Section 77(4), (5) and (6) of the Electoral Act 2026, a political party can lawfully permit the participation in its primary election of a person whose name was not contained in the Register of Members submitted to the 1st Defendant not later**

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than twenty-one (21) days before the date fixed for the conduct of the primary election.

3. If the allegation that the 3rd Defendant's name was not contained in the membership register submitted to the 1st Defendant by the 2nd Defendant at least 21 days to the conduct of its primary election for the post of the Senator for Delta Central Senatorial District is proved, whether by virtue of Sections 77 (4), (5) and (6) of the Electoral Act, 2026, the Participation of the 3rd Defendant in the said primary election held on or about 29th of May 2026 is lawful?

4. If issue two (2) above is answered in the negative Whether by virtue of Sections 77 (4), (5) and (6) of the Electoral Act, 2026, the primary election conducted by the 2nd Defendant for the post of the Senator for Delta Central Senatorial District on or about 29th of May 2026 is invalid, null and void and of no effect whatsoever by reason of the Participation therein of the 3rd Defendant?

5. If issue three (3) above is answered in the affirmative; whether the said primary election held

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on or about the 29th of May, 2026 by the 2nd Defendant is capable of producing a lawful candidate for the 2nd Defendant for the purpose of the 2027 general election?

6. **If issue four (4) above is answered in the negative whether having regard to Sections 77(4), (5) and (6) of the Electoral Act, 2026, the 1st Defendant can validly accept, recognize or give effect to the nomination or sponsorship of the 3rd Defendant by the 2nd Defendant for the Delta Central Senatorial District election of its Senator, where the said nomination emanated from a primary election conducted in non-compliance to the provisions of the Electoral Act, 2026.**

From the foregoing it is apparent that the substance of this suit is hinged on whether the 3rd Defendant name is on the register of members submitted to the 1st Defendant by the 2nd Defendant at least 21 days before 29th day of May, 2026 being the day the 2nd Defendant's primary was held.

ARGUMENTS OF COUNSEL

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The Learned Counsel for the Plaintiff citing the cases of **NATIONAL ASSEMBLY V. PRESIDENT FEDERAL REPUBLIC OF NIGERIA (2003) 9 NWLR (PT 824) 104; PDP V INEC (2014) 17 NWLR (PT 1437) 525 AT 558 PARAS C-D; DANGANA V. USMAN (2013) 6 NWLR (PT 1349) 50 AT 80-81** and **ALAGBAOSO V. INEC & ORS (2023) LPELR-59702 (SC)** submitted that where the provisions of a statute are clear, precise and unambiguous, they must be given their ordinary grammatical meaning without embellishment or qualification by the Court. He added that even the case of **AHIWE & ANOR V. INEC & ORS (2024) LPELR-61674(SC)** reaffirmed the above position.

Learned Counsel for the Plaintiff after tracing the basis upon which party primaries are conducted by citing the provisions of **Sections 211 and 88(1) of the 1999 Constitution (as Amended),** he then proceeded to submit that **Section 77 of the Electoral Act, 2026** imposes mandatory obligations upon political parties and prescribe Strict Conditions regulating party primaries. That the legislature deliberately employed mandatory language in providing that political party shall submit their membership registers to the 1st Defendant not later than twenty-one (21) days before the date fixed for their primaries and that

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only members whose names are contained in the register so submitted shall be eligible to vote or be voted for at such primaries.

He opined that the clear intention of the draftsman in enacting **Section 77 of the Electoral Act, 2026** was to ensure certainty, transparency, accountability and integrity in the process of candidate's nomination by political parties.

He submitted that the law is settled that where a statute lays down a clear path, process and procedure for doing an act, that path and procedure must be followed to the letter. He relied on the cases of **ABUBAKAR V. YAR'DUA (2008) 19 NWLR (PT.1120) 1; AKUNEZIRI V. OKENWA (2000)15 NWLR (PT.691) 526; UDE V NWARA (1993) 2 NWLR (PT.278) 638, UNIVERSITY OF NIGERIA TEACHING HOSPITAL MANA GEMENT BOARD V. NNOLI (1994) 8 NWLR (PT.363).**

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He submitted that an act done in disobedience of a mandatory requirement of a statute is invalid and a nullity ab initio. That no person derives any right or benefit from any act done in fragrant disobedience of any mandatory provisions of a statute. He

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reference the case of **AMAECHI V. INEC (2008) 5 NWLR PT.1080 P.227 AT. 318 PARAS C-D**

He posited that the inevitable consequence of the failure of the 3rd Defendant's name to appear in the said membership register is that he was not qualified to participate in the contest or emerge from the primary election conducted by the 2nd Defendant as it is unlawful, null and avoid.

The Counsel argued that the decision of the Supreme Court in the case of **AHIWE & ANOR V. INEC & ORS (2024) LPELR-61674(SC)** which considered the legal effect of a political party's membership register under the now repealed **Electoral Act, 2022**, is of no assistance in the determination of the present dispute as the provisions contained in **Section 77 of the Electoral Act, 2026** is materially different from those in the former **Electoral Act of 2022** which did not contain **Section 77 (5),(6) and (7).**

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He argued that the **Section 77(5)** has ousted the internal discretion of a political party on the issue provided for therein.

He opined that the introduction of these subsections constitutes a deliberate and significant departure from the regime under the repealed **Electoral Act, 2022.** That the Court is bound to give

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effect to the law as presently enacted and not as it existed under the repealed statute.

THE ARGUMENT OF THE 2ND DEFENDANT'S COUNSEL

In response to the Plaintiff's argument the Counsel for the 2nd Defendant submitted that by Sections 135, 136 and 137 of the Evidence Act, 2011 the burden lies upon the party asserting the existence of facts upon which a legal right or liability depends. The Plaintiff therefore bears the burden of proving, by credible and admissible evidence, every material fact necessary to sustain the reliefs sought in this suit.

He insisted that it is equally settled that a party seeking declaratory reliefs must succeed on the strength of his own case and not on the weakness of the defence. That declaratory reliefs are not granted on speculation, conjecture, admissions, default of pleadings or sympathy. He cited **ADESINA V. AIR FRANCE (2022) 8 NWLR (PT.1833) 555, NDUUL V. WAYO (2018) 16 NLWR (PT1646) 548 AND DUMEZ (NIG.)LTD V. NWAKHOBA (2008) 18 NWLR (PT. 1119) 361; EGOLUM V. OBASANJO (1999) LPELR-1046(SC), (1999) 7 NWLR (PT.611) 355.**

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He asserted that the Plaintiff has failed to establish any legal or factual basis entitling him to the declaratory, injunctive or consequential reliefs sought.

The law is firmly settled that **the Constitution** (particularly in **Sections 65** and **66** as it relates to the Senate) has exhaustively and comprehensively provided for the requirements of qualifications and disqualifications of persons seeking elective offices in Nigeria. Consequently, no provision of the Electoral Act can be interpreted so as to create an additional qualification or disqualification not contemplated by the Constitution.

He adopted his arguments on the supremacy of the constitution and the doctrine of covering the field earlier made in his Written Address in support of the preliminary objection.

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He then cited the case of **KABIR V. APC & ORS (2024) LPELR- 61712 (SC) (P.G 65-66)** where he quoted **JAURO, JSC** as saying;

> **"Section 77(3) of the Act does not preclude a political party from updating its register after submission...**

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There is nothing in Section 77(3) of the Electoral Act that disqualifies a candidate whose name was not in the register of members submitted to INEC."

He opined that **Section 77** undoubtedly introduces novel administrative obligations relating to the maintenance, submission and use of party membership registers. He maintained that **subsection (5), (6) and (7)** regulate the conduct of political parties in relation to party primaries and prescribes consequences for non-compliance by the political party itself. Nowhere does the section provide that a candidate becomes constitutionally or statutorily disqualified merely because his name does not appear in the membership register relied upon by the Plaintiff.

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That if the legislature's intendment was to empower anyone to disqualify a candidate, it would have expressly stated so.

The Learned Counsel postulated since the Plaintiff's principal allegation that the 3rd Defendant's name was not contained in the register of members is deflated by the affidavit evidence of the 2nd Defendant deposed to by its Delta State

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Secretary the Plaintiff's principal declaratory reliefs are wholly misconceived and liable to be refused.

He finally, submitted that where the principal declaratory relief upon which ancillary and consequential reliefs are founded fails, every consequential relief predicated thereon must equally fail. He cited **GORNOR OF KOGI STATE V. SIMON (2024) LPELR-73317(CA) AND GULF AZOV SHIPPING CO. LTD V. LONESTAR DRILLING (NIG) LTD (2026) LPELR-83264(CA).**

THE ARGUMENT OF THE 3RD DEFENDANT'S COUNSEL

The Learned Counsel for the 3rd Defendant pointed out that if the Plaintiff's reliefs 1 to 5 fail, Reliefs 6 to 15 must necessarily follow. He then went on to reiterate the similar argument the Counsel for the 2nd Defendant made on burden of prove emphasizing that the plaintiff must establish his case and not rely on the weakness in the case of the Defendant(s) citing the case of **APUGO V. UGOJI (2022) LPELR-59893 (SC) 48, PARA C-D; AND TUMBIDO V. INEC (2023) LPELR-60004 (SC) 28-29, PARA F-E.**

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The Learned Silk posited that the Plaintiff has not satisfied his burden of prove to produce a register of members of the

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2nd Defendant duly submitted to the 1st Defendant and then show that the 3rd Defendant's name is not on that register.

He argued that the required register qualifies as a public document within the context of **Section 102(b) of the Evidence Act, 2011.** He cited the cases of **FRN V. DANLADI (2020) 17 NWLR (PART 1752) 130 ONUZULIKE V. DAMA-EDOZIEM (2016) 6 NWLR (PART 1508) 215, 231 (SC).**

He submitted that where the certified true copy of the public document is the only admissible evidence, no other secondary evidence, either oral or otherwise, will suffice. He relied on the combined effect of **Sections 89 (e) and 09 (c) of the Evidence Act, 2011 (as Amended)**. and cited the case of **OWAKAH V. R.S.H & P.D.A (2022) 12 NWLR (PART 1845) 463 (SC); IDI V. STATE (2018) 4 NWLR (PART 1610) 359; EMEKA V. CHIBA-IKPEAZU (2017) 15 NWLR (PART 1589) 345.**

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He urged the Court to discountenance all conjectures of the Plaintiff as the only admissible evidence in proof of his principal allegation was not duly placed before the Court.

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The Learned Silk then turn his attention to the Plaintiff's **Exhibits** namely **Exhibits 2, 4, 5, 6** and **9** to fault them mostly for absence of certification and for not disclosing how the Plaintiff came about the document.

He however submitted that the 3rd Defendant nonetheless supplied cogent and convincing evidence to debunk the wide and unsustainable allegations of the Plaintiff.

Citing the case of **JIME V. HEMBE (2023) LPELR-60334 (SC) PP 31-33** he emphasized that there is no provision in the Electoral Act that precludes a candidate from participating in more than one primary. What is forbidden is his nomination by more than one political party at the same time and to his knowledge.

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On the 3rd Defendant's **Exhibit A001** the Counsel submitted that it is trite law that once a letter of resignation is written and received by an establishment, that resignation crystallizes as from the date the letter was received. He cited **IBRAHIM V. ABDULLAH (2019)17 NWLR (PART 1701) 292 AT 315 (PARA G-H)** and **OLUYEMI V. ASAOLU (2008) LPELR-4772(CA) AT PAGE 66-67, PARA D-C**

That the 3rd Defendant cannot be perpetually bond to APC

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as that would be breach of his constitutional right as contained in **Section 40 of the 1999 Constitution** (as amended).

Finally the Learned Silk submitted that the deposition from all the Defendants is that the 2nd Defendant had already forwarded the name of the 3rd Defendant as its candidate. He posited that, that puts an end to the matter and makes the Plaintiff's action one that is proscribed and under a penal consequence by virtue of **Section 83 (5)** and **(6)(b) of the Electoral Act, 2026** respectively.

RESOLUTION OF THE ISSUES

ISSUE 1

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Whether an affidavit already filed in a matter can be withdrawn and whether the Court can make use of withdrawn Affidavit evidence in determining the issues raised in the suit.

It is commonsensical that a party to a proceeding cannot be forced to either proceed with his/her matter or defend his/her self. It is the party's choice to make. However one thing is sure such a party cannot disown the consequences if any of his choices. That having been said if in a suit before the Court a

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party decides to withdraw his/her processes including affidavits filed in the matter before they are adopted at the hearing. The Court cannot restrain such a party from doing so. It is that party's choice to make and those Processes/Affidavits would be accordingly struck out.

The submission of the 3rd Defendant that **Exhibit B** attached to the 1st Defendant's Further Affidavit is evidence before the Court and same cannot be withdrawn is misconceived.

In the case of **U.A.C. (NIG.) LTD. V. GLOBAL TRANSPORTE S.A. (1996) 5 NWLR (PT. 448) 291 (CA) (PP. 300-301, PARAS. G-A)** it was held that;

> **"An Affidavit which has been withdrawn ceases to be of any usefulness and should be struck out. Such an Affidavit will be regarded as not being before the Court and it cannot rely on it. In this case, the trial court was wrong to use the Appellant's Affidavits which had been withdrawn. However, his use of them did not occasion a miscarriage of Justice as they were used more to the advantage of the Appellant."**

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Be that as it may in the case of **SHARING CROSS EDUCATIONAL SERVICES LTD. V. UMARU ADAMU ENTERPRISES LTD. (2020) 10 NWLR (PT.1733) 561 AT 588. (PP. 588-589, PARAS. H-E)** the Supreme Court held that;

> **"When an application or a suit has been struck out or dismissed, it does not mean that the processes filed in the course of hearing the application or suit have become useless for all purposes. Therefore if the depositions in an Affidavit or a Counter-Affidavit were true at the time they were deposed, they would remain true for the purpose of the suit in which they are sought to be relied on. B.C.C. LTD. V. ADO IBRAHIM & CO. LTD. (2003) 2 NWLR (Pt.805) 462; MAGNUSSON V. KOIKI (1993) 9 NWLR (Pt.317) 287** referred to."

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The point I am making and that can easily be deduce here is that a party to a suit can actually withdraw his processes and affidavits along with it.

Going further if another party in the suit wants to rely on a withdrawn Affidavit, such a party ought to seek the leave of the

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court. In the instant case such leave was not sought. Assuming such a leave was even sought the particular affidavit in question being a 2nd Further Counter Affidavit filed by the 1st Defendant is one that is incompetent; as it is not contemplated nor provided for in neither the Practice Directions nor the Rules of Court. More so the 1st Defendant never sought and obtained the leave of this Court before throwing it into the Court. The 2nd Further Counter Affidavit has a similar fate as the Further Counter Affidavits filed by the 2nd and 3rd Defendants earlier rejected by this Court. Therefore giving the above stated in the circumstance of this case those Affidavits cannot be relied upon in determining this suit and I so hold.

ISSUE 2

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Whether, having regard to the provisions of Section 77(4), (5) and (6) of the Electoral Act 2026, a political party can lawfully permit the participation in its primary election of a person whose name was not contained in the Register of Members submitted to the 1st Defendant not later than twenty-one (21) days before the date fixed for the conduct of the primary election.

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without much ado the relevant and specific provision of the law that answer the above question in the circumstance of this case when read together with **Subsections (4)** and **(6)** is **Section 77 (5) of the Electoral Act 2026;** for clarity it provides thus;

> **"Only members whose names are contained in the register shall be eligible to vote and be voted for in party primaries, congresses and conventions."**

The wordings are clear, precise and unambiguous, therefore they shall be accorded their ordinary meaning. The legislatures meant what they said and said what they meant. See the cases of **NATIONAL ASSEMBLY V. PRESIDENT FEDERAL REPUBLIC OF NIGERIA (2003) 9 NWLR (PT 824) 104; PDP V INEC (2014) 17 NWLR (PT 1437) 525 AT 558 PARAS C-D; DANGANA V. USMAN (2013) 6 NWLR (PT 1349) 50 AT 80-81** and **ALAGBAOSO V. INEC & ORS (2023) LPELR-59702 (SC).**

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Without further ado it is manifest that the above quoted provisions of the Electoral Act, 2026, answers with precision the question raised in issue 2.

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This issue is therefore answered in the negative and resolved in favour of the Plaintiff and against the 2nd and 3rd Defendants.

ISSUE 3

If the allegation that the 3rd Defendant's name was not contained in the membership register submitted to the 1st Defendant by the 2nd Defendant at least 21 days to the conduct of its primary election for the post of the Senator for Delta Central Senatorial District is proved, whether by virtue of Sections 77(4), (5) and (6) of the Electoral Act, 2026, the Participation of the 3rd Defendant in the said primary election held on or about 29th of May 2026 is lawful?

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To resolve this issue I must first ascertain the veracity of the Plaintiffs' allegation that the 3rd Defendant's name was not contained in the register of members submitted to INEC at least 21 days before the 29th day of May the date of the 2nd Defendant's primaries. This will unavoidably lead us to evaluation of affidavit evidence properly before the Court.

There is no Doubt that a number of evidence attached to the Affidavits of all the parties in the suits falls under what the Evidence Act defines as public documents. See **Section 102 of**

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the **Evidence Act, 2011 (as Amended).** It is observed and acknowledged by the parties that a number of documents attached to the Plaintiff's Affidavit in support of his Originating Summons are Public document that were yet to be satisfied as of the time they were filed. It is on this account that the Defendants especially the 3rd Defendant had raised alarm about its usefulness in determining this matter base on the combine reading of the provisions of **Section 89 (e), 90 (1)(c)** and even **Sections 104 and 105 of the Evidence Act.**

Section 8 (e) and 90 (1) (c) is of the effect that;

> **"Secondary evidence may be given of the existence, condition or contents or a document when the original is a public document within the meaning of Section 102; in paragraph (c) or (f), a certified copy of the document, but no other secondary evidence, is admissible."**

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So before we dive in head on into kernel of this case it is necessary to clear the air of certain misconceptions as they relate to this issue.

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In the case of **AONDOAKAA V. OBOT (2022) 5 NWLR (PT. 1824) 523; (P. 599, PARAS. C-D)** the Supreme Court held that;

> **"Copies of public documents attached to an Affidavit as exhibits need not be certified true copies because the documents already form part of the evidence adduced by the deponent before the court, and are available to the court to use once it is satisfied that they are credible."**

Two years later in the case **ONUEGBU V. GOV., IMO STATE (2024) 15 NWLR (PT. 1962) 419** where the appellants challenged the admissibility and reliance on **Exhibit "A"** by the trial court on the basis that the document was not certified before it was annexed as an exhibit to the processes filed by the respondents. However, the document was neither tendered in evidence in open court nor annexed to a witness statement on oath. It was attached to the Further Affidavit filed by the respondents the Apex Court maintained that;

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> **"The copy of a public document attached to an Affidavit as exhibit need not be a certified true copy because the document already forms part of the evidence adduced by the deponent before**

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the court and is available to the court to use once it is satisfied that it is credible. Any document attached to an Affidavit need not be certified."

Just in the previous year in **PATRICK V. C.O.P. (2025) 16 NWLR (PT. 2011) 323 (PP. 350-351, PARAS. AD-C) 6.** The Supreme Court itinerated that;

"A copy of a public document attached to an Affidavit is admissible in evidence and such a document need not be a certified true copy to be admissible in evidence and the contents of the document is considered to be part of the affidavit evidence. This is particularly more so in this case as the existence and authenticity of the First Information Report was not contested by the Appellant and the copy was in fact produced and exhibited by him. In the circumstance, the copy of the First Information Report, Exhibit A to the Affidavit of the Appellant, was admissible evidence and the two lower courts were correct in giving it credence and acting on it. EZECHUKWU V. ONWUKA (2016) 5 NWLR (PT.

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1506) 529; AONDOAKAA V. OBOT (2022) 5 NWLR (PT. 1824) 523; GUSAU V. LAWAL (2023) 10 NWLR (PT. 1892) 297. referred to."

That same year in the case of **HOMAN ENGINEERING CO.LTD. V. U.W.S. LTD. (2025) 6 NWLR 431 (PP. 445-446, PARAS. G-A)** they continued to insist that;

"Copies of public documents attached to an affidavit as exhibits need not be certified true copies because the documents already formed a part of the evidence adduced by the deponent before the court, and are available for the court to use once it was satisfied that they are credible. ONOBRUCHERE V. ESEGINE (1986) 1 NWLR (PT. 19) 799; NZEKWU V. NZEKWU(1989) 2 NWLR (PT. 104) 373; ARAKA V. EGBUE (2003)17 NWLR (PT. 848) 1; OJUYA V. NZEOGWU (1996) 1 NWLR (PT. 427) 713; ILORIN EAST L.G.A. V. ALASINRIN(2012) LPELR 800; B.A.T. (NIG.) LTD. V. INT'L TOBACCOCO. PLC (2013) 2 NWLR (PT. 1339) 493 referred to."

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It is crystal clear from the litany of successive legal precedence that the objections raised by the Defendants especially the 3rd Defendant can hold water.

The provision of the Evidence Act mentioned above do not apply in the instant case.

This is even more true given that the Plaintiffs at each paragraphs where a copy of the public document is attached stated that he had made effect to get the Certified true copies of those document by applying but was not given them before he could file his Originating summons. The Plaintiff even attached the said application letters and some receipts. See **Paragraphs 3, 8, 11, 14, 16 and 25 of the Plaintiff's Affidavit.**

Is trite that pre-election matters are sui-generis and time bound. The Plaintiffs had only 14 days from the date the cause of action arose within which to file his Originating Summons. Ordinarily, he would not be expected to wait forever to get the necessary certified copies of the relevant documents before approaching the Court in the circumstance. He has evidently done all that he needed to do. The Law does not command the impossible.

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Having laid that issue to rest. I will now proceed to examine the Affidavit evidence as earlier mentioned.

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The following issue of facts arose for consideration in this matter;

The Plaintiff have demonstrated via Affidavit exhibits that;

1. That the 3rd Defendant was a member of the All Progressive Party (A.P.C). See **Exhibits 2, 4** and **5.**
2. That the 3rd Defendant at least sought to participate in the All Progressive Party's Primaries for the post of the Senator of his constituency. **See Exhibit 5.** Curiously however attached to the expression of interest form was the 3rd Defendant's voluntary withdrawal of his interest to contest in that party (A.P.C). The forms were dated 30th April, 2026.
3. That the 3rd Defendant "participated" in the All Progressive Party's primaries held on the 18th day of May, 2026 as his name was reflected in the list of aspirants and received as much as 3,643 votes. See **Exhibit 6.**
4. That on the 22nd day of May, 2026 the 3rd Defendant tendered his resignation letter to the All Progressive Party. See **Exhibit 9**
5. Meanwhile the 2nd Defendant had on the 6th day of May, 2026 submitted its register of members to the 1st Defendant. **See Exhibits 7** and **14.** The said **Exhibits,**

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unlike the Plaintiff's name does not contain the 3rd Defendant's name.

6. That the 3rd Defendant however participated in the 2nd Defendant's senatorial Primaries held on the 29th day of May, 2026 and was declared the winner. See **Exhibit 10**.
7. That his complaint via a petition to the 2nd Defendant fell on deaf ears. See **Exhibit 11.**

The 2nd Defendant's denial of the above averments as they relates to it are as follows;

1. That name and particulars of the 3rd Defendant is contained in the 2nd Defendants register of members, a copy of which is in my custody and a copy of which I accompanied other officials to the 1st Defendant's Headquarters in Abuja to submit both the electronic and hard copy (paper) form. See **Exhibit PAO1.**
2. The same register of members was used by the 2nd Defendant in the conduct of the Delta Central Senatorial Primary election which the 3rd Defendant won and was returned as the candidate of the 3rd Defendant.
3. The Plaintiff was not privy to compilation of any of the registers both of the N.D.C and A.P.C.

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4. That the 2nd Defendant's Register of Members attached to and exhibited in the Affidavit in support of the Originating Summons is not the valid, authentic and current register of the party as at May, 2026 and was not the register of members submitted to the 1st Defendant by the 2nd Defendant pursuant to Section 77 of the Electoral Act or used for the primary election.

See **Paragraph 8, 10, 13, 14 & 15** of the 2nd Defendant's Counter Affidavit.

The 3rd Defendant's denial of the above averments as they relates to him are;

1. That though he was a member of the A.P.C, by a letter dated 5th day of May, 2026, he duly resigned his membership of the A.P.C.
2. That since he left APC as aforesaid, he have not been interested in their activities and do not monitor them.
3. That the Plaintiff's purported **Exhibit 7** is an illusion and indeed is a joke, not being a certified true copy of the document it purports to be.
4. That his name is embodied in the register of members duly submitted by the 2nd Defendant to the 1st Defendant within

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the time mandated by the requisite law, regulations and guidelines for the submission of register of members by the Political parties to the 1st Defendant.

5. Plaintiff's **Exhibit 9** is not my document and was deliberate conjured in order to lend credence to this case.

See **Paragraph 4, 8, 12 (iii) & (iv) & 14** of the 3rd Defendant's Counter Affidavit.

THE COURT'S FINDING OF FACTS.

I have carefully studied the Affidavits for all the Plaintiffs and that of the 2nd and 3rd Defendants and make the following findings:

Some of the Plaintiff's averments were admitted by the Defendants such as the following;

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1. That the 3rd Defendant was a member of the All Progressive Party (A.P.C).
2. That the 3rd Defendant at least sought to participate in the All Progressive Party's Primaries for the post of the Senator of his constituency. **The contention is whether he ended up contesting in the APC primaries.**
3. That the 3rd Defendant left APC to NDC. **The contentions is when did he leave.**

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4. That the 2nd Defendant submitted its register of members to the 1st Defendant. **The contention is when the 2nd Defendant submit the register of members.**
5. That the 3rd Defendant participated in the 2nd Defendant's senatorial primaries held on the 29th day of May, 2026 and was declared the winner. **The Contention is, was the 3rd Defendant's name in the register of members submitted to the 1st Defendant 21 days before the 29th day of May, 2026? By extension, which of the registers two register represented the Court was used during the 2nd Defendant's primaries on the 29th day of May, 2026?**

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RESOLUTION OF THE ISSUES ARISING FROM THE FACTS PRESENTED.

1. When did 3rd Defendant leave A.P.C.

The Plaintiff alleges the 3rd Defendant left A.P.C on the 22nd day of May, 2026 by virtue of the letter bearing that date as in **Exhibit 5.** Whereas the 3rd defendant denies same and alleges he left on the 5th day of May, 2026 by virtue of the letter bearing that date **Exhibit A001**. Both letters were written on the same letterhead paper, bears the 3rd Defendant's signature, has the

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same content except that they bear different dates and the 3rd Defendant's **Exhibit A001** has as the last sentence of the letter, "Attached is a photocopy of my membership ID." and his address after his signature and name. These identical letters would leave one guessing which of them is authentic?

Therefore I will proceed to consider some other corroborating evidence. **Exhibit A005** even though it seems to be corroborating the 3rd Defendant's **Exhibit A001** the former which is an affidavit dated 9th of July, 2026 is not reliable in determining the truth of this issue. This is because it was made during the pendency of this suit precisely 29 days after this suit was filed. I would therefore proceed with my quest for better corroborative evidence. Perhaps the next question may give us a clue even though if this issue is ascertained it would not by its own strength determine the resolution of the main issue before this Court.

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2. Whether the 3rd Defendant ended up contesting in the APC primaries.

All of the exhibits presented by the Plaintiff leads to the conclusion that the 3rd Defendant was an aspirant and a contestant in APC's primaries except for the **item 17**; the "Letter of Voluntary Withdrawal" that is part of the Nomination form.

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To the above allegation the 3rd Defendant simply makes evasive denial without making a direct, clear and unequivocal denial that **he did not contest the APC primaries held on the 18th day of May, 2026.**

The Plaintiff's averment in Paragraph 4 of his Affidavit was direct, clear and unequivocal. It reads;

> **"I know for a fact that the 3rd Defendant contested the Delta Central Senatorial District Primary Elections conducted by the All Progressives Congress on the 18th of May, 2026 but was not returned as the winner."**

The 3rd Defendant's response was;

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> **"Paragraphs 14 and 15 of the Affidavit in support are false, as the APC was obligated to act on my letter of resignation upon receipt of same and cannot by the simple expedience of retaining my name in its membership register, nullify, defeat or derogate from the binding legal effect of my unequivocal letter of resignation, which took place upon due communication to the party."**

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In the case of **JUKOK INTL LTD V. DIAMOND BANK PLC (2016) 6 NWLR (PT. 1507) 55 (CA) (P. 104, PARAS. A-C)** it was held that;

> **"A denial, be it in pleadings or in an affidavit must be concise, direct and exact. It must not be evasive or leave any room for conjecture or speculation. A denying paragraph in an affidavit should specifically deny the particular paragraph or paragraphs in the affidavit of the adverse party. Hence, a denial which is vague or phrased in a circuitous double speak manner in a counter affidavit is in law futile and in fact not a denial."**

In the case of **DANLADI V. DANGIRI (2015) 2 NWLR (PT. 1442) 124 (P. 166, PARAS. E-F)** the Supreme Court held that;

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> **"Where a party is evasive in his reaction to the affidavit of his adversary, the facts averred by the adversary stand unchallenged and are deemed admitted by that party who could have disputed same effectively but chose to dance around the facts. In pleadings, such evasiveness is called negative pregnant."**

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The implication of the forgoing is that the 3rd Defendants did not deny the allegations of the Plaintiff on this issue thus invariably admitted same. However assuming I decide not make the above fact the determinant of my judgment. Would the remaining questions elicit answers in favour of the defendants? I invite you to proceed with me on this quest.

3. On what date did the 2nd Defendant submit its register of members to the 1st Defendant.

The Plaintiff averred that the 2nd Defendant submitted its membership register to the 1st Defendant on the 6th day of May, 2026. That was 24 four days before the date (29/5/2026) for the 2nd Defendant's Primaries. See Paragraph 16 of the Plaintiff Affidavit.

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Again I keenly read the 2nd and 3rd Defendants Counter Affidavits to see a direct, clear and unequivocal denial of that averment but what I saw was a general and evasive denial.

In fact the 2nd Defendant completely avoided that averment of the Plaintiff in Paragraph 16 of the Plaintiff's Affidavit.

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In the case of **AGBAKOBA V. I.N.E.C. (2008) 18 NWLR (Pt. 1119) 489** (P. 549, paras. D-H) 7 the Supreme Court held that;

> **"In actions initiated by originating summons, the affidavits filed by the parties in the matter take the place of pleadings and so any material paragraph of the affidavit not specifically denied is taken as having been admitted; that is, as unchallenged evidence upon which the court can act. As in pleadings, the denial must not be evasive but frontal."**

See also the cases of **JUKOK INTL LTD V. DIAMOND BANK PLC (SUPRA) (P. 104, PARAS. A-C)** and **DANLADI V. DANGIRI (SUPRA) (P. 166, PARAS. E-F)**

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Worst still none of the Defendants told us the specific date they submitted the 2nd Defendant's register of members which they averred they submitted and used at their primary election.

4. **Which of the two registers presented to the Court was used during the 2nd Defendant's primaries on the 29th day of May, 2026? Was it the one by the Plaintiff or the one by the 2nd and 3rd Defendants.**

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In all there were 4 Registers of the 2nd Defendant before the Court as follows;

a. Two were presented by the Plaintiff; the first was **Exhibit 7** that was not certified and the second was **Exhibit 14** a replica of the first that was certified.
b. One was presented by the 2nd Defendant, an uncertified copy. As in **Exhibit PAO1.** (from the inscription on it, it shows it was for NDC internal use and it covers Ughelli North L.G.A of Delta State.)
c. Another was presented by the 3rd Defendant a certified copy as in **Exhibit A004.** (the inscription on it is: "Complete member Record (member + member old) State: Delta, Date range: 2026/02/07 to 2026/05/07, Total Record: 15290")

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The 2nd Defendant made it clear that it was **Exhibit PAO1** that they used in conducting its primaries on the 29th day of May, 2026. See Paragraph 8 and 10 of the 2nd Defendant's Counter Affidavit.

5. Whether the 3rd Defendant's name was in the register of members submitted to the 1st

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Defendant 21 days before the 29th day of May, 2026?

At this juncture the Court must decide which of the parties register can be said to be the one submitted to the 1st Defendant at least 21 days before the 29th day of May, 2026.

As I stated before the Defendants did not assist the Court in any way to identify the specific date its register of members (**Exhibits PAO1** or **Exhibit A004**) was submitted to the 1st Defendant.

The only date that was specifically mentioned with respect to the issue was 6th day of May, 2026 which relates to **Exhibits 7** and **14**

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The Defendants **did not** also aver in their Counter Affidavit that though the register was initially submitted on the 6th day of May, 2026 however it was later updated on any later dated that was still 21 days before the 29th day of May, 2026.

Furthermore the letter by the 2nd Defendant via its solicitors to the 1st Defendant requesting for certification of its membership register was for the register that was in the 1st Defendant's custody as of **10th May, 2026.** See **Exhibit PAO2**.

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similarly the letter by the 3rd Defendant to the 1st Defendant requesting for the certified true copy of the 2nd Defendant's register of members was for the register that was in the 1st Defendant custody as of **10th May, 2026.** See **Exhibit A003**.

It was these letters that birthed **Exhibit A004.**

10th May, 2026 is precisely 19 days before the 29th day of May, 2026 not 21 days as provided for under **Section 77 (4) of the Electoral Act.**

Worst still the Defendants did not even lift a finger to help the Court to identify where the name of the 3rd Defendant is listed in both **Exhibit PAO1** (a document of over 500 pages) and **Exhibit A004** (a document of about or over 2490 pages)

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From the foregoing, the balance of probability tilt more in favour of the Plaintiff's **Exhibit 7** and **14.** I am more inclined to believe that the register of members of the 2nd Defendant that was submitted to the 1st Defendant 21 days before the day of the 2nd Defendant primaries is Plaintiff's **Exhibit 7 and/or 14** and I so hold.

I took my time to scan through **Exhibits 7** and **14** but I could not find the name and particulars of the 2nd Defendant therein.

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As to the question whether by virtue of **Sections 77(4), (5) and (6) of the Electoral Act, 2026,** the Participation of the 3rd Defendant in the said primary election held on or about 29th of May 2026 is lawful?

The law is clear, its **Section 77(5)** states that;

> **"Only members whose names are contained in the register shall be eligible to vote and be voted for in party primaries, congresses and conventions."** *(Emphasis supplied by me)*

The register referred to therein was the one referred to under **Section 77(4)** which I have held is as in **Exhibits 7 and 14.** Therefore the above question is answered in the negative.

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Accordingly Issue 3 is answered in the negative against the 1st, 2nd and 3rd Defendants and I hereby resolve same in favour of the Plaintiff.

ISSUE 4

If issue three (3) above is answered in the negative Whether by virtue of Sections 77(4), (5) and (6) of the Electoral Act, 2026, the primary election

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conducted by the 2nd Defendant for the post of the Senator for Delta Central Senatorial District on or about 29th of May 2026 is invalid, null and void and of no effect whatsoever by reason of the Participation therein of the 3rd Defendant?

Section 77(6) of the Electoral Act, 2026 provides that;

> **"A political party shall not use any other register for party primaries, congresses and conventions except the register submitted to the Commission."** *(Emphasis supplied by me)*

It is worthy to be remembered that the register of members used by the 2nd Defendant in its primaries was **Exhibit PAO1** not as it is in **Exhibits 7** or **14.**

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The implication is that the 2nd and 3rd Defendants were in breach of **Section 77 (5) and (6) of the Electoral Act, 2026** in the conduct of their primaries there by invalidating same rendering it null and void and of no effect whatsoever.

In the case of **YERIMA V. BALAMI (2023) 6 NWLR (PT. 1881) 48 (P. 523, PARAS. E-G)** the Court held that;

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"The use of the word "shall" in a statute or rules of court makes it mandatory that, that provision of the statute or rule must be observed and complied with. The word "shall" is used to express a command or exhortation or what is legally mandatory.[ONOCHIE V. ODOGWU (2006) 6 NWLR (PT. 975) 65;UGWU V. ARARUME (2007) 12 NWLR (PT. 1048) 365;NWANKWO V. YAR'ADUA (2010) 12 NWLR (PT. 1209)518; CHUKWUOGOR V. CHUKWUOGOR (2021) 15 NWLR(PT. 1799) 357 referred to."

Issue 4 is therefore answered in the affirmative against the 1st and 2nd Defendants and resolved in favour of the Plaintiff.

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ISSUE 5

If issue four (4) above is answered in the affirmative; whether the said primary election held on or about the 29th of May, 2026 by the 2nd Defendant is capable of producing a lawful candidate for the 2nd Defendant for the purpose of the 2027 general election?

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From the totality of the facts and law dissected and expounded above respectively, the simple answer to the above question is **NO.**

ISSUE 6

If issue five (5) above is answered in the negative whether having regard to Sections 77(4), (5) and (6) of the Electoral Act, 2026, the 1st Defendant can validly accept, recognize or give effect to the nomination or sponsorship of the 3rd Defendant by the 2nd Defendant for the Delta Central Senatorial District election of its Senator, where the said nomination emanated from a primary election conducted in non-compliance to the provisions of the Electoral Act, 2026.

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It is trite that you cannot place something on nothing and expect it to stand.

If there was no lawful primaries conducted by the 2nd Defendant and if issue 5 above was answered in the negative it follows that the 1st Defendant cannot validly accept, recognize or give effect to the nomination or sponsorship of the 3rd Defendant by the 2nd Defendant for the Delta Central Senatorial District Election as the

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said nomination emanated from a primary election conducted in non-compliance to the provisions of the **Electoral Act, 2026** and I so hold.

The law has made very clear provision on the consequence of non-compliance with the provision of the **Electoral Act,2026. Section 84(3) of the Electoral Act, 2026** provides that;

> **"Where a court finds that a political party failed to comply with the provisions of this Act in the Conduct of its primaries, its candidate for that election shall not be included in the election for the particular position in issue."**

Similarly under the tenure of the Electoral Act, 2022 in the case of **YERIMA V. BALAMI (PP. 523-524, PARAS. H-F; 532, PARAS.B-C)** the Supreme Court's finding and admonition therein are apt in the instant case. Their Lordship held;

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> **"By virtue of section 84(13) of the Electoral Act 2022, where a political party fails to comply with the provisions of the Act in the conduct of its primaries, its candidate for election shall not be included in the election for the particular position in issue.**

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political parties, which have the responsibility to organize, conduct or hold primary elections for the purpose of nominating or selecting candidates for elections under the Act, by dint of section 84(1) of the Act, do not have any discretion or other option in the conduct of such primary election than to comply with the specific provisions of the Act in the conduct of party primaries. The political parties are bound to organize, conduct or hold such primary election in strict compliance with the provisions of the Act, otherwise they would be subject to and liable to the penalty specially prescribed for the failure or refusal to comply or obey or for the breach of the provisions.

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Therefore, it is not a matter or issue within the province of a political party, either alone or along with other persons, to conduct or hold primary elections in complete violation, breach and non-compliance with the express and mandatory provisions of the Act for the conduct of the primaries. The mandatory provisions of

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the law cannot be waived or in any way condoned by any persons and can only be ignored, disregarded, disobeyed or breached at the risk of the penalty specifically prescribed by the statute for such disregard, disobedience, violation or breach.

So, Section 84(13) of the Electoral Act prescribes the legal consequence of the conduct of party primary elections in breach of the Electoral Act. The consequence is that the person nominated as its candidate for the election shall not be included in the election for the particular position in issue. Implicit in the provision is that such a primary election cannot produce a valid candidate for the election and is therefore a nullity. [IBRAHIM V. LAWAL (2015) 11 NWLR (PT. 1489) 490; ARIORI V. ELEMO (1983) 1 SCNLR 1; INAKOJU V. ADELEKE (2007)4 NWLR (PT. 1025) 423; GWONTUO V. STATE (1983) 1SCNLR 142; LADOJA V. INEC (2007) 12 NWLR (PT.1047) 115; CIL RISK & ASSET MGT. LTD. V.

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EKITI STATE GOVT. (2000) 12 NWLR (PT. 1738) 203 referred to."

see also the case of **CHRISTIAN V. INNOCENT (2023) 13 NWLR (PT. 1900) 183 (SC) (P.205, PARAS. E-F)**

> **"By virtue of section 84 (13) of the Electoral Act 2022, where a political party fails to comply with the provisions of the Act in the conduct of its primaries, its candidate for election shall not be included in the election for the particular position in issue. The provision stipulates the penalty for failure to comply with or breach of the provisions of the Act in the conduct of primary election by a political party."**

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The above notwithstanding the law still creates a window for erring Political parties to right their wrong. Thus in **YERIMA V. BALAMI (SUPRA) (P.532, PARAS. D-G)** their Lordship explained that;

> **"Where a political party has conducted its primary election in breach of the provisions of the Electoral Act 2022, there is nothing in section 84 (13) of the Act which precludes the political party from conducting another primary election**

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and nominating its candidate in accordance with the Act and the party's guidelines and constitution, if the one hundred and eighty days before the appointed date of the general election, prescribed by Section 29(1) of the Act 2022 and the period within which a political party shall submit its candidate to the Independent National Electoral Commission had not then expired. Since the primary election held contrary to the Electoral Act is a nullity, it is as if no primary election was conducted. Where the one hundred and eighty days to the date appointed for the election expired before the primary election was adjudged to be a nullity, then the political party loses the right to hold another primary election to present a candidate for the election. If the 180 days to the date of the general election has not expired, a political party can hold a repeat primary election to select or nominate its candidate in accordance with the Electoral Act 2022. In the instant case, the Court

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of Appeal rightly affirmed the order of a repeat primary election made by the trial court."

In the instant case before me the general elections is scheduled to hold on the 16th day of January, 2027. That would be precisely 53 days from today the 24th day of November, 2026. A Further look at **Exhibit 3; INEC Revised Timetable and Schedule of Activities for 2027 General Election** you will notice that **item 4** provides for the submission of Forms EC9 and EC9A, 9B, 9C, 9D & 9E for Presidential & National Assembly Candidates. This was scheduled to take place between 9.00am 27th June, 2026 to 6.00 pm 11th July, 2026 in compliance with **Section 29(1) of the Electoral Act, 2026**. The said Section provides thus;

"Every political party shall, not later than 120 days before the date appointed for a general election under this Act, submit to the commission, in the prescribed Forms, the list of the candidates the party proposes to sponsor at the elections, who shall have emerged from valid primaries conducted by the political party."

I therefore agree with the Learned Counsel for the 2nd Defendant that the timetable exhibited by the Plaintiff himself clearly shows

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that the period prescribed by INEC for the conduct of party primaries and the submission of candidates has elapsed.

That being the case and in the light of the foregoing, I am satisfied that the Plaintiffs have proved their case on the balance of probability and they are entitled to some of the reliefs sought in their Originating Summons. I therefore, make the following Declarations and Orders:

1. **A DECLARATION is made that having regard to the provisions of Section 77 (4), (5) and (6) of the Electoral Act, 2026 a political party cannot lawfully permit the participation in its primary election of a person whose name was not contained in the Register of Members Submitted to the 1st Defendant not later than twenty-one (21) days before the date fixed for the conduct of the primary election.**

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2. **A DECLARATION is made that by virtue of Sections 77(4), (5) and (6) of the Electoral Act, 2026, the participation of the 3rd Defendant in the 2nd Defendant's primary election for the Delta Central Senatorial District held on or about 29th of May, 2026, despite his name not being contained in the**

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membership register submitted to the 1st Defendant by the 2nd Defendant at least 21 days to the conduct of the said primary election is unlawful.

3. A DECLARATION is made that by virtue of Sections 77 (4), (5) and (6) of the Electoral Act 2026, the primary election conducted by the 2nd Defendant for the Delta Central Senatorial District on or about 29th of May, 2026 is invalid, null and void and of no effect whatsoever by reason of the participation therein of the 3rd Defendant whose name was not contained in the membership register submitted to the 1st Defendant by the 2nd Defendant not later than twenty-one (21) days before the said primary election.

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4. A DECLARATION is made that the 2nd Defendant's Delta Central Senatorial District Primary election held on or about the 29th of May, 2026 having been conducted in total disregard and in breach of the provisions of Section 77 of the Electoral Act, 2026 is not capable of producing a lawful candidate for

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the 2nd Defendant for the purpose of the 2027 general election.

5. A DECLARATION is made that having regard to Sections 77(4), (5) and (6) of the Electoral Act, 2026 the 1st Defendant cannot accept, recognize or give effect to the nomination or sponsorship of the 3rd Defendant by the 2nd Defendant for the Delta Central Senatorial District election, where the said nomination emanated from a primary election conducted on or about 29th of May, 2026 in breach of the provisions of the Electoral Act, 2026.

6. AN ORDER is made setting aside or nullifying the Delta Central Senatorial District primary election conducted by the 2nd Defendant on or about the 29th day of May, 2026 for failing to comply with the provisions of the Electoral Act, 2026.

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7. AN ORDER is made directing the 1st Defendant not to include the name of the 3rd Defendant or any other candidate of the 2nd Defendant as a candidate for the 2027 general election for the Position of Senator representing Delta Central Senatorial District.

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8. **AN ORDER is made setting aside the sponsorship of the 3rd Defendant or any other candidate by the 2nd Defendant for the Delta Central Senatorial District election to be held on the 16th of January, 2027 or thereabout.**

9. **AN ORDER OF INJUNCTION is made restraining the 2nd and 3rd Defendants either by itself and/or himself, agents, privies, surrogates or any other person(s) whosoever from according recognition to the 3rd Defendant/himself or in any manner whatsoever featuring or parading the 3rd Defendant/himself as the winner of the 2nd Defendant's primary election for the Delta Central Senatorial District election conducted on the 29th of May, 2026 or thereabout.**

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For the avoidance of doubt I reiterate the following Orders:

1. **The Independent National Electoral Commission the 1st Defendant herein is hereby Ordered not to recognize Augustine Ovie Omo-Agege, the 3rd Defendant herein or any other candidate of 2nd Defendant (NDC) as a candidate for the 2027 General**

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Election for the position of Senator Representing Delta Central Senatorial District.

2. **The Independent National Electoral Commission (INEC) the 1st Defendant herein is hereby Ordered to remove the name of Augustine Ovie Omo-Agege the 3rd Defendant herein from the list of candidates, the ballot papers and any other materials that will be used for and during the 2027 General Election for the position of Senator Representing Delta Central Senatorial District.**

3. **Augustine Ovie Omo-Agege the 3rd Defendant herein is hereby restrained forthwith either by himself, agents, privies, surrogates or any other person(s) whosoever from parading himself in any manner whatsoever as the winner of the Nigerian Democratic Congress (NDC) the 2nd Defendant herein and/or candidate for the 2027 General Election for the position of Senator Representing Delta Central Senatorial District.**

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The parties shall bear their respective cost.

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This is the Judgment of the Court.

HON. JUSTICE H.A. NGANJIWA
JUDGE
24/11/2026

APPEARANCE

Parties are all absent in court.

F. J. Kpedi (Miss) Esq., appears for the Plaintiff with **C. O. Okonkwo Esq., Emmanuel Lawal Esq., O. V. Daghagba (Miss) Esq.,** and **M. A. Fure-Omojovwo Esq.,**

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F. T. Emli-Ede Esq., appears for the 1st Defendant.

O. J. Enewovwa Esq., holding the brief of **O. O. Uzzi Esq.,** for the 2nd Defendant.

E. J. Omokete Esq., appears for the 3rd Defendant.

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WARRI DIVISION.
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